No. 17-9572

In The
Supreme Court of the United States

CURTIS GIOVANNI FLOWERS,

Petitioner,

v.

STATE OF MISSISSIPPI,

Respondent.

On Writ Of Certiorari To The Supreme Court Of Mississippi

JOINT APPENDIX
VOLUME I

SHERI LYNN JOHNSON*
KEIR M. WEYBLE
CORNELL LAW SCHOOL
245 Hughes Hall
Ithaca, NY 14853
(607) 255-6478
slj8.cornell.edu

ALISON STEINER
OFFICE OF THE STATE PUBLIC DEFENDER CAPITAL DEFENSE COUNSEL DIVISION
239 N. Lamar St., Suite 604
Jackson, MS 39201
(601) 351-2490

Counsel for Petitioner

JIM HOOD
JASON L. DAVIS
BRAD A. SMITH*
OFFICE OF THE MISSISSIPPI ATTORNEY GENERAL
Post Office Box 220
Jackson, MS 39205-0220
(601) 359-3680
bsmith@ago.state.ms.us

Counsel for Respondent

**Counsel of Record*

Petition For Certiorari Filed June 22, 2018
Certiorari Granted November 2, 2018

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

TABLE OF CONTENTS

Page

Relevant Docket Entries 1

Defendant's Motion to Bar the Prosecution from Exercising Peremptory Strikes at All, or at Least from Exercising Them Against Non-White Venire Members, During Jury Selection or in the Alternative to Bar the Seeking or Imposition of the Death Penalty in the Event of Conviction [Vol. 13, C.P. 1651-1674][1] (Sept. 12, 2008) 3

Notice of Renewal and Adoption of Motions from the Previous Five Trials [Vol. 15, C.P. 1928-1931] (Apr. 9, 2010) 37

Excerpts of group *voir dire* transcript [Vol. 29, Tr. 789-790; 792-794; 861-863; Vol. 30, Tr. 905-910; 912-913; 915-916; 918; 920-935; 955; 958; 960; 964-968; 970-975; 985-991; 1002; 1027-1030; Vol. 31, Tr. 1037-1039; 1075-1076] (Jun. 7-8, 2010) .. 45

Transcript section of motion arguments during jury selection [Vol. 31, Tr. 1095-1097; 1101-1102] (Jun. 8, 2010) 97

Transcript of individual *voir dire* of Carolyn Wright [Vol. 31, Tr. 1161-1165] (Jun. 8, 2010) 101

---

[1] "C.P." refers to the Clerk's Papers contained within Volumes 1 through 23 of the record submitted to and considered by the Mississippi Supreme Court in connection with Flowers' appeal of his 2010 convictions and death sentence. "Tr." refers to the Trial Transcript contained within Volumes 24 through 47 of that same record.

TABLE OF CONTENTS – Continued

Page

Transcript of individual *voir dire* of Pamela Chesteen [Vol. 31, Tr. 1165-1175] (Jun. 8, 2010)..... 107

Transcript of individual *voir dire* of Harold Waller [Vol. 32, Tr. 1201-1205] (Jun. 8, 2010) 120

Transcript of individual *voir dire* of Tashia Cunningham [Vol. 32, Tr. 1291-1298] (Jun. 9, 2010)..... 126

Transcript of individual *voir dire* of Edith Burnside [Vol. 32, Tr. 1298-1308] (Jun. 9, 2010) 135

Transcript of testimony by Crystal Carpenter [Vol. 32, Tr. 1327-1335] (Jun. 9, 2010)..... 147

Transcript of individual *voir dire* of Bobby Lester [Vol. 32, Tr. 1335-1337; Vol. 33, 1338-1352] (Jun. 9, 2010)..... 157

Transcript of individual *voir dire* of Flancie Jones [Vol. 33, Tr. 1359-1365] (Jun. 9, 2010).... 176

Transcript of individual *voir dire* of Diane Copper [Vol. 33, Tr. 1402-1410] (Jun. 9, 2010)..... 184

Transcript section of counsel arguments during jury selection [Vol. 35, Tr. 1733-1739] (Jun. 10, 2010)..... 194

Transcript of juror tendering, peremptory strikes, and *Batson* argument [Vol. 35, Tr. 1756-1790; Vol. 36, 1791-1801] (Jun. 10, 2010)..... 202

Excerpts of Supplementation of Motion for JNOV or in the Alternative for a New Trial in Response to Order of June 30, 2010 [Vol. 22, C.P. 2953; 2964-2966; 2973] (Jul. 23, 2010)..... 242

TABLE OF CONTENTS – Continued

Page

Opinion of trial judge denying motion for JNOV [Vol. 22, C.P. 2999-3040] (Aug. 6, 2010)..... 247

Flowers v. State of Mississippi, 240 So.3d 1082 (Miss. 2017) (op. on remand) (Nov. 2, 2017) 299

Letter from Clerk of the United States Supreme Court Granting Petition 527

RELEVANT DOCKET ENTRIES
State of Mississippi v. Curtis Giovanni Flowers
Mississippi Supreme Court Case #2010-DP-01348-SCT
Trial Court Case #2003-0071-CR

	Filed/Dated
Defendant's Motion to Bar the Prosecution from Exercising Peremptory Strikes at All, or at Least from Exercising Them Against Non-white Venire Members, During Jury Selection or in the Alternative to Bar the Seeking or Imposition of the Death Penalty in the Event of Conviction	Sept. 12, 2008
Notice of Renewal and Adoption of Motions from the Previous Five Trials	Apr. 9, 2010
Verdict Finding Defendant Guilty	Jun. 18, 2010
Verdict Recommending Death Sentence	Jun. 19, 2010
Judgement and Order Imposing Death Sentence	Jun. 19, 2010
Defendant's Motion for JNOV or in the Alternative for a New Trial	Jun. 23, 2010
Defendant's Supplementation of Motion for JNOV or in the Alternative for a New Trial in Response to Order of June 30, 2010	Jul. 23, 2010
Order of Trial Judge Denying Motion for JNOV	Aug. 6, 2010
Notice of Appeal	Aug. 12, 2010

Flowers v. State, 158 So.3d 1009 (Miss. 2014) (affirming convictions and death sentence)	Nov. 13, 2014
Flowers v. Mississippi, 136 S.Ct. 2157 (2016) (order granting certiorari, vacating judgment, and remanding for further consideration)	Jun. 20, 2016
Order Granting Motion for Briefing Schedule on Remand	Sept. 15, 2016
Flowers v. State, 240 So.3d 1082 (Miss. 2017) (affirming convictions and death sentence)	Nov. 2, 2017
Order of Mississippi Supreme Court Denying Rehearing, ***Flowers v. State***, 2010-DP-01348-SCT	Feb. 22, 2018

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI	PLAINTIFF
v.	CAUSE NO. 2003-0071-CR
CURTIS GIOVANNI FLOWERS	DEFENDANT

MOTION TO BAR THE PROSECUTION FROM EXERCISING PEREMPTORY STRIKES AT ALL, OR AT LEAST FROM EXERCISING THEM AGAINST NON-WHITE VENIRE MEMBERS, DURING JURY SELECTION OR IN THE ALTERNATIVE TO BAR THE SEEKING OR IMPOSITION OF THE DEATH PENALTY IN THE EVENT OF CONVICTION

(Filed Sep. 12, 2008)

COMES NOW Curtis Flowers, by and through the undersigned counsel, and moves this Court, pursuant to the Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States and Article 3 §§ 14, 26, 28 and 31 of the Mississippi Constitution of 1890, to bar the prosecution from using peremptory strikes at all, or at least from using them against non-white venire members during jury selection, or in the alternative to bar the seeking or imposition of the death penalty in the event of conviction, and in support of this motion, Defendant would show the following:

1. Curtis Flowers is African-American. He is currently facing retrial on four counts of capital murder

in Montgomery County, Mississippi. This is the fifth attempt by the State to obtain a valid conviction of Mr. Flowers on any of these charges. The first two trials involved a single count and the last two trials involved all four counts. The first three attempts to convict Mr. Flowers resulted in convictions and death sentences that were reversed on direct appeal. The fourth attempt, in which the death penalty was not sought, resulted in a mistrial when the jury was unable to agree on a verdict.

2. The first two verdicts were reversed because the Supreme Court of Mississippi found that the verdicts had been obtained through prosecutorial misconduct not relating to jury selection. *See State v. Flowers*, 773 So. 2d 309, 317 (Miss. 2000) ("*Flowers I*"); *State v. Flowers*, 842 So. 2d 531, 538 (Miss. 2003) ("*Flowers II*") (both reversing for prosecution misconduct involving, *inter alia*, questioning witnesses about non-existent and/or inadmissible facts and arguing matters not in evidence to the jury).

3. The third verdict was reversed specifically because of the prosecutor's racially discriminatory use of his peremptory strikes to eliminate qualified African-American venire members from the jury in violation of *Batson v. Kentucky*, 476 U.S. 79 (1986). *State v. Flowers*, 947 So. 2d 910, 916, 923-31 (Miss. 2007) ("*Flowers III*").

4. The State has announced that it will, despite foregoing the opportunity to do so in the fourth trial, seek the death penalty against Mr. Flowers in the event he is convicted, thus bringing into play the

court's obligation to accord "heightened scrutiny" to any legal or factual claims made by the defendant. *State v. Flowers*, 947 So. 2d 910, 916, 923-31 (Miss. 2007) ("*Flowers III*").

I. MOTION TO BAR THE PROSECUTION FROM EXERCISING PEREMPTORY STRIKES AT ALL, OR AT LEAST FROM EXERCISING THEM AGAINST AFRICAN-AMERICAN VENIRE MEMBERS, DURING JURY SELECTION

5. The Supreme Court of the United States and the Mississippi Supreme Court have both unequivocally declared that racial discrimination in jury selection may not be tolerated, and any verdict entered by a jury tainted with this discrimination cannot stand. *Batson v. Kentucky*, 476 U.S. 79 (1986), *Lockett v. State*, 517 So.2d 1346, 1349 (Miss. 1987) (implementing *Batson*).

6. Over the years since *Batson* was decided both the state and federal high courts have adopted standards for determining how this often subtly manifested evil is to be ferreted out and remedied. *See, e.g., Miller-El v. Dretke*, 545 U.S. 231 (2005) (reiterating that the totality of the circumstances analysis of whether racial discrimination occurred requires looking at the cumulative effect of all the circumstances, not relying on any one justification offered in isolation and reversing, for the second time, the Fifth Circuit's failure to remedy such invidious discrimination by a Texas district attorney and without the usual remand for the Fifth Circuit to act, entering the order setting aside the conviction

itself); *Snyder v. Louisiana*, ___ U.S. ___. 128 S. Ct. 1203, 1212 (2008) (recognizing that, in the absence of contemporaneous specific findings by the trial court concerning the alternative reasons relied on, retrospective validation of peremptory strikes is impossible and held that "for present purposes, it is enough to recognize that a peremptory strike shown to have been motivated in substantial part by discriminatory intent could not be sustained on the basis of any lesser showing by the prosecution.") *Flowers III*, 947 So. 2d at 923-31 and 940 (discussing *Batson* specifically in reference to the prosecution of Mr. Flowers).

7. From the institution of this case in 1997 through the present, the lead prosecutor in this matter has been Fifth Circuit Court District Attorney Doug Evans, who is also going to be the lead prosecutor in this one. In both the second and third trials Mr. Evans was judicially determined to have racially discriminated in his use of peremptory challenges during jury selection. See rulings of Judge C.E. Morgan, III at Fl. II Tr. 1349; 1363 (second trial) and findings of the Mississippi Supreme Court in *State v. Flowers*, 947 So. 2d 910, 923-31 (Miss. 2007) ("*Flowers III*") (third trial). In the first and fourth trials, there was no judicial disposition of the *Batson* issues, in the first trial because the appellate court declined to decide the issue raised after reversing on other grounds, in the fourth because the State's methods failed to prevent a fairly constituted jury from being seated, and there was, in any event, was [sic] no verdict to be reviewed by way of motion for mew [sic] Trial or appeal.

8. However, the records of both make it clear that they, too, were pervaded with similar racially discriminatory jury selection methods prohibited by *Batson* and its progeny. A tabular representation of the State's persistent, pernicious and invidious use of its peremptory challenges over the 10 years it has been attempting to convict Mr. Flowers is attached hereto as Exhibit A.

9. In light of the continuing use by the prosecutor of condemned practices in peremptory strikes even after judicial condemnation of his methods, restricting his use of those strikes in the upcoming trial is the only way to prevent his continued willful violation of the Fourteenth Amendment rights not only of this defendant, but of the community as a whole, and the consequent undermining of the justice system that inevitably occurs when such invidious discrimination occurs. *Miller-El v. Dretke*, 545 U.S. at 238.[1]

---

[1] The Court in *Miller-El v. Dretke* implies the need for diligent and creative judicial efforts if this thorny but significant problem is to be remedied:

> It is well known that prejudices often exist against particular classes in the community, which sway the judgment of jurors, and which, therefore, operate in some cases to deny to persons of those classes the full enjoyment of that protection which others enjoy." *Strauder v. West Virginia*, 100 U.S. 303, 309 (1880); *see also Batson v. Kentucky*, *supra*, at 86. Defendants are harmed, of course, when racial discrimination in jury selection compromises the right of trial by impartial jury, *Strauder v. West Virginia*, *supra*, at 308, but racial minorities are harmed more generally, for prosecutors drawing racial lines in picking juries establish "state-sponsored

10. Although the right to peremptory strikes in a capital case is given to the State by Miss. Code Ann. § 99-17-3, that right must give way to the Equal Protection Clause of the United States Constitution and it is in the inherent power of a court enforcing the Equal Protection Clause to exercise such remedies to prevent its violation as are effective in doing so. *Batson*

---

group stereotypes rooted in, and reflective of, historical prejudice," *J.E.B. v. Alabama ex rel. T. B.*, 511 U.S. 127, 128 (1994).

Nor is the harm confined to minorities. When the government's choice of jurors is tainted with racial bias, that "overt wrong . . . casts doubt over the obligation of the parties, the jury, and indeed the court to adhere to the law throughout the trial. . . ." *Powers v. Ohio*, 499 U.S. 400, 412, (1991). That is, the very integrity of the courts is jeopardized when a prosecutor's discrimination "invites cynicism respecting the jury's neutrality," *ibid.*, and undermines public confidence in adjudication, *Georgia v. McCollum*, 505 U.S. 42, 49, (1992); *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, (1991); *Batson v. Kentucky*, *supra*, at 87. So, "[f]or more than a century, this Court consistently and repeatedly has reaffirmed that racial discrimination by the State in jury selection offends the Equal Protection Clause." *Georgia v. McCollum*, supra, at 44, 112 S.Ct. 2348; see *Strauder v. West Virginia*, *supra*, at 308, 310; *Norris v. Alabama*, 294 U.S. 587, 596, 55 S.Ct. 579, 79 L.Ed. 1074 (1935); *Swain v. Alabama*, *supra*, at 223-224, 85 S.Ct. 824; *Batson v. Kentucky*, *supra*, at 84, 106 S.Ct. 1712; *Powers v. Ohio*, *supra*, at 404, 111 S.Ct. 1364.

The rub has been the practical difficulty of ferreting out discrimination in [discretionary] selections . . .

545 U.S. at 237-38 (string citations omitted) (*emphasis added*)

v. Kentucky, 476 U.S. 79 (1986), *Swain v. Alabama*, 380 U.S. 202, 224 (1965).[2]

11. The Mississippi Supreme Court has recognized the existence of, and invoked, the inherent judicial power to take such actions even when not expressly authorized by statute or rule:

> It is important to note that this power, at least in its summary aspect, is grounded not in the Court's punitive jurisdiction but rather in its necessary and inherent power to regulate its proceedings. . . . [F]undamental to the establishment of the superior governmental entities by the Constitution is the vesting of those powers necessary to insure the ability of those entities to exercise essential measures of preservation and protection to secure their existence and the beneficial execution of the high governmental duties imposed upon them.

In re Lewis, 654 So.2d 1379, 1383 (Miss. 1995) (finding it within Court's inherent powers to suspend a malfeasant attorney from practice before the courts of the state even prior to completion of the statutory and rule

---

[2] Miss. Code Ann. § 99-17-3 provides only for the number of peremptory strikes (12, plus one for each alternate to be selected) each side in a capital case may have, and that the State must at all times tender a full panel before the defendant exercises any peremptories. Though the Supremacy Clause would, of course, permit complete abrogation of the statute if necessary to remedy racial discrimination, that would not be necessary if the court elected to grant one of the defendant's requested alternate reliefs and permit the State to use up to the full number of peremptories, but simply to restrict their use against non-white venire members, or preclude it from seeking the death penalty.

based disciplinary/suspension/disbarment process if necessary to prevent the attorney from doing continuing harm during the pendency of the proceedings).

12. Given the recognized difficulty attending ferreting out and remedying abuse of the discretion that is the hallmark of peremptory strikes, this prosecutor's repeated abuse of his discretionary right to employ peremptory strikes in the past in this case must be prevented from happening again. *Miller-El v. Dretke*, 545 U.S. at 238, *Snyder*, 128 S. Ct. at 1212 (referring to "this subtle question of causation").

13. Since judicial rebukes for past abuse of this right were demonstrably of no avail in preventing its reoccurrence, the only way to do this effectively in the upcoming trial will be by precluding the State from employing any peremptory challenges at all, or at least precluding it from employing such challenges to exclude African-American venire members who have not been otherwise disqualified for cause from serving on the trial jury.

First Trial – October 1997 – Lee County – Record Establishes Racial Discrimination: 100% Of Minority Jurors Tendered Challenged By State All-White Jury Hears Case

14. The first trial of this matter, on the indictment for capital murder of Bertha Tardy, occurred in October, 1997 in Lee County, Mississippi, but as a Montgomery County Circuit Court matter, presided over by Hon. C.E. Morgan, III, Circuit Judge of the 5th

Judicial District of Mississippi, in which Montgomery County is located. At that trial, after voir dire and excusals for hardship and for case related cause (including *Witherspoon* removals), there were 97 persons on the panel upon which the State exercised its peremptory challenges. Of those venire members 22 were African-American (23%) and 75 (77%) were White [Fl. I Tr. 234].

15. During the course of jury selection, 36 venire members – five of the 22 African-American and 31 of the 75 White venire members were tendered to District Attorney Evans for acceptance. Mr. Evans struck all five African American jurors presented to him [Fl. I Tr. 235]. This resulted in an all white jury being seated to try the first trial. [Fl. I Tr. 235; R. 378. (Defendant's Motion for JNOV or New Trial ¶ 5)]. *See also*, Exhibit A (with further comparative tabulations)

16. The Defendant interposed a *Batson* objection, noting these facts and that there had been nothing in voir dire of the jurors struck to suggest any basis other than race for the strike. [Fl. I Tr. 235]. The trial court denied the Defendant's objection and permitted the all [sic] jury, selected by the State striking every African-American juror presented to it, to stand, [Fl. I Tr. 239; R. 378].

17. The *Batson* error was identified by the attorneys handling the direct appeal of the conviction and sentence that this jury entered to be of sufficient merit to be raised as Issue I in the direct appeal of this conviction. *Flowers I*, 773 So. 2d at 315. However, when the

case was reversed as a result of the prosecutorial misconduct regarding use of facts not in evidence and other crimes evidence, and the accumulation of other errors, the Court expressly stated that it would not and did not discuss or decide the *Batson* question. *Id.* at 317. Nonetheless, the facts in the record suggest that intentional racial discrimination [sic] the part of the prosecution infected jury selection in the first trial.[3]

18. Many of the reasons articulated by the State to justify its peremptory strikes of all five African-American venire members in this first trial were similar to those that Mississippi Supreme Court found to be pretextual in *Flowers III* under the "five indicia of pretext that are relevant when analyzing the

---

[3] The trial court did not find that a prima facie *Batson* claim had been made out, at least in part because the state had exercised some of its peremptory strikes against white jurors as well. Under present case law, this was clearly error. The U.S. Supreme Court has made it clear that neither a prima facie case, nor a showing of pretext can be defeated because the prosecutor did not utilize all his strikes against minority jurors, or even if he elected not to strike some minority jurors,. *Miller-El v. Cockrell*, 537 U.S. 322, 332 (2003) (finding that arguable case of *Batson* sufficient to warrant federal habeas review appeared from the record and remanding to Fifth Circuit with instruction to address merits of claim, despite the fact that prosecutor permitted a minority juror to serve and peremptorily struck four non-minority prospective jurors); *Miller-El v. Dretke*, 545 U.S. at 240-41 (reviewing failure of lower court on previous remand to find substantive *Batson* violation in same case, finding such violation and reversing conviction without further remand). This error, had it been reached, could have required remand to correct that problem, if not to reperform the entire *Batson* process. *See e.g. Puckett v. State*, 737 So.2d 322, 334 (Miss. 1999).

race-neutral reasons offered by the proponent of a peremptory strike."

> (1) disparate treatment, that is, the presence of unchallenged jurors of the opposite race who share the characteristic given as the basis for the challenge; (2) the failure to voir dire as to the characteristic cited; . . . (3) the characteristic cited is unrelated to the facts of the case; (4) lack of record support for the stated reason; and (5) group-based traits. *Manning v. State*, 765 So.2d 516, 519 (Miss.2000).

Flowers III, 947 So. 2d at 917, 919.[4]

19. The transcript of voir dire in this trial [Fl. I Tr. 122-219] shows that none of the African-American jurors peremptorily struck was questioned in voir dire by the State concerning the matter for which Mr. Evans stated that he or she was struck. State peremptory strikes S-2 and S-5 of African American venire members Ms. Locus (juror number not in the record) and Mr. Jimmy Wayne Cummings (juror number 19) were expressly founded in whole or in part on "group based traits" despite the lack of voir dire on the subject

---

[4] *Flowers III* was, obviously, decided well after the trial court and the Mississippi Supreme Court were presented with the *Batson* claim in Mr. Flowers' first trial. However, these standards for proving pretext had been implemented in Mississippi long before then. *See e.g. Lockett v. State*, 517 So.2d 1346, 1349 (Miss. 1987); *Bush v. State*, 585 So.2d 1262, 1268 (Miss.1991); *Perry v. State*, 637 So.2d 871, 874 (Miss. 1994) (cited by the Court in *Flowers III*); *Stewart v. State*, 662 So.2d 552, 557 (Miss.1995).

and with little or no record support for the purported factual information.[5]

20. State peremptory strike S-10, against African American venire member Shelia Smith (juror number 46) is without record support, other than that she was employed as a federal corrections officer at a halfway house. It seems inherently implausible for a prosecutor to strike a law enforcement official from a

---

[5] Peremptory S-2 was articulated to be due to Ms. Locus status as a single mother with three children and "no husband to help take care of them," and her religion. There was no State voir dire of Ms. Locus regarding either of these statuses so the assumptions made were clearly "group based" and not particular to her individual circumstances with respect to either status. Indeed, had her childcare needs interfered with her "ability to sit and be fair and impartial and not try to rush through this trial" as articulated by Mr. Evans [Flowers I Tr. 236], she like at least one other juror, a Ms. Smallwood, would have been able to share that information in voir dire and been excused for cause [Flowers I Tr. 222]. It does not appear that any other venire members not excused for cause because of having small children and spouses unavailable to care for them were either questioned about that or peremptorily struck for that reason, either As to the second justification, shortly after this trial, the Mississippi Supreme Court held that as a matter of Mississippi constitutional and statute law that "while we will permit a party to strike a potential juror for her actual beliefs, even if that belief springs from her religion, we will not allow challenges based solely on a potential jurors' religious affiliation [or lack thereof]." *Thorson v. State*, 721 So.2d 590, 594-95, (Miss.1998). S-5 was exercised against Mr. Cummings, at least in part because of the neighborhood he resided in, though again with no voir dire by the State of him or anyone else on the panel on the subject matter of neighborhood of residence, and only on the basis of vague information provided by unnamed Sheriffs or Police departments not otherwise substantiated in the record.

jury if he or she survives cause excusal by the Court or peremptory challenge by the defense as Ms. Smith did here. *See Miller-El v. Dretke* 545 U.S. at 246; *Snyder*, 128 S. Ct. at 1211.[6]

21. Even where the African-American venire members were struck for reasons like those applied to white venire members as well – for arrests, or for having family members with criminal involvement (S-4 of Bobby Williams, juror 15; S-7, of Mamie Cayson, juror 28; and as a second reason cited for S-5 against Mr. Cummings, juror 19) [Fl. I Tr. 237-38] there was apparently no voir dire by the DA on this subject, or any effort to discover similarly situated Whites who did not self disclose on their juror questionnaires, whereas it appears from the record that some of the information about African-American prospective jurors came from independent investigation.

22. Hence, the record is clear that racial discrimination was practiced by the State in using its peremptory challenges of at least two Blacks, and possibly in

---

[6] During court voir dire concerning people with law enforcement ties, and Ms. Smith assured the court that this would not impair her ability to be fair and impartial. [Fl. I Tr. 141]. The State cites an alleged discussion with an unspecified "sheriff's department" not otherwise substantiated in the record, about Ms. Smith's purported liberal political views (a group-based trait, actually) and the unnamed department's speculations regarding her possible sympathy for criminals as the basis for the strike. [Fl. I. Tr. It did not, however, voir dire Ms. Smith, or anyone else who had law enforcement ties but assured the court they could still be fair and impartial, concerning their political views and/or their sympathies for criminals they may have worked with.

more, at the first trial in this matter. This supports depriving the State of the opportunity to do this again.

Second Trial – March 1999 – Harrison County – Trial Judge Finds Racial Discrimination 100% Of Minority Jurors Tendered Challenged By State Single Black Juror On Jury But Only Trial Court Finds Batson Violation In Attempt To Strike Him

23. In [sic] the second trial of Mr. Flowers was on the indictment for the capital murder of Derrick Stewart. This trial took place in March, 1999 in Harrison County, Mississippi, again as a Montgomery County matter presided over by Judge Morgan. At this second trial, the trial court specifically found that District Attorney Evans had racially discriminated in his use of peremptory challenges by citing pretextual reasons not applied to comparable Whites and/or not supported by the record or the judge's personal observations in attempting [sic] justify two of his peremptory strikes of African-American venire members. [Fl. II Tr. 1347-49; 1355-63].

24. Seventy-five venire members were in the panel that survived initial qualification, and on which both cause and peremptory strikes were made. Of those 75, 15 were African-American (20%) and 60 (80%) were White, [Fl. II Tr. 969; R. 1220-21]. After removals from the venire for case related cause (including *Witherspoon* removals) a total of 49 venire members, 11 African-American (22%) and 38 White (78%), remained on the panel on which the State exercised peremptory strikes. Of these 49, a total of 30 – five African-American, 25

White – were tendered to the state for consideration. Once again, as he had in the first trial, Mr. Evans directed a peremptory challenge to each and every one of the African-American venire members tendered to him for acceptance on the final jury panel. [Fl. II Tr. 1166-76; 1313; 1320; 1327-29; R. 1218-23]. *See also* Exhibit A.

25. The five jurors struck by the prosecutor in this trial were Linda Yarbrough (venire member 5, S-1, African-American female); Sherry Lott (venire member 12, S-3, African-American female); Gania K. Gray (venire member 19, S-4, African-American female); Tyron D. Cole (venire member 27, attempted S-5, African-American male); and Eugene Crockett, Jr. (venire member 28, S5, African-American male). Only one peremptory was directed at a white venire member during selection of the regular jury, Karen Cook (venire member 10, S-4, white female). [Fl. II Tr. 1342-52; 1355-63; R. 1220, 1222]. A second white person was struck by the prosecution during alternate selection, but no African-Americans were tendered to it for acceptance or strike during that process. [Fl. II Tr. 1368-69; R. 1220,1222]. *See also* Exhibit A.

26. The defense interposed *Batson* objections to the peremptory strikes exercised against all five of the African-American venire members. [Fl. II Tr. 1343-44 (Yarbrough, Lott and Gray); 1355 (Cole); 1363-64 (Crockett)]. The court found that the State's seeking to peremptorily strike all African-American prospective jurors tendered to it made out a prima facie case of racial discrimination and required the State to articulate

reasons for these strikes, and for the strike of Ms. Cook, the one white venire member struck by the State, as well. [Fl. II Tr. 1343-44]

27. The defense offered rebuttal to all of the proffered reasons. [Fl. II Tr. 1344-45 (Ms. Yarbrough); 1246-51 (Ms. Lott); 1351-52 (Ms. Gray); 1356-62 (Mr. Cole); 1364 (Mr. Crockett)]. The trial court rejected some of this rebuttal, but accepted it with respect to two of the attempted strikes, finding that that [sic] one of the two reasons offered for the strike of Ms. Lott (no. 12, S-3)[7] and all three of the reasons articulated for the strike of Mr. Cole (no. 27, first, failed, use of S-5) were pretexts for racial discrimination. [Fl. II Tr. 1347-48; 1363-64].[8]

---

[7] In Ms. Lott's case the State articulated two reasons for peremptorily striking her. The first one addressed by the court was the State's contention that it struck Ms. Loft because she had stated in her questionnaire that she thought he [sic] death penalty was only appropriate when there were children involved [Fl. II Tr. 1344]. The defense rebutted this by establishing that Ms. Lott had not in fact so limited her view of the death penalty in her questionnaire, and pointing out that the State had accepted white jurors who had expressed even stronger reservations about the death penalty than Ms. Lott and the Court found that explanation pretextual because it had not been applied to comparable Whites. [Fl. II Tr. 1346-47].

[8] In Mr. Cole's case, the State offered three reasons for its strike: 1) that he was not an eligible juror because his summons was for a general venire assigned to another courtroom, not the special venire in this case; 2) that "according to members of the District Attorney's Office here [Harrison County] he is a gang member . . . of the BGD gang;" and 3) that he "acted like he was sleeping during part o the voir dire." a [sic] [Fl. II Tr. 1355-56]. The trial court rejected the first reason as pretextual on factual grounds since the case was not being tried to a special venire, but rather to a general venire, and that the custom in Harrison county

28. In the case of Ms. Lott, the trial court nonetheless upheld the strike, finding that a second reason proffered was not pretextual [Fl. II Tr. 1351], a ruling that is questionable in light of the Supreme Court's intervening elaboration on examining pretext where multiple reasons are given. *See, e.g. Miller-El v. Dretke*, 545 U.S. at 246 (suggesting that cursory acceptance of backup reasons proffered by a prosecutor after an initial one is challenged is suggestive of pretext in and of itself).

29. However, since all three reasons proffered for the strike of Mr. Cole were demonstrated to be factually untrue, Mr. Cole was seated on the jury. But for that judicial intervention the State's tactic of striking every African-American tendered to it would again have resulted, as it had in the first trial, in the seating of a lily-white jury in the second trial, as well.[9]

---

was to commingle all jurors summonsed to all courtrooms on any given day if one courtroom did not have sufficient jurors to try a case. [Fl. II Tr. 1355, 1360-63]. The second reason was abandoned after a Harrison County DA Office investigator disclosed to Mr. Evans that Mr. Cole was "not a BGD member or is not the one he though at least" [Fl. II Tr. 1361]. The third reason – that Mr. Cole had been sleeping or otherwise inattentive during voir dire – was rejected as a complete fabrication. Judge Morgan, stated that "I watched him and he answered questions during voir dire and did not notice that he did that, and I am ruling that you cannot strike him." [Fl. II Tr. 1363]

[9] As there were only 11 African-American venire members in the entire available panel, Mr. Evans could have excluded the white prospective juror he did and still had enough peremptories remaining to attempt to challenge every African-American venire person remaining, even without accounting for the two additional

30. The trial court's findings of pretext are further supported by record evidence that three of the other "indicia of pretext" recognized by the Mississippi Supreme Court in *Flowers III* were also in play in this trial: disparate treatment of comparable minority and non-minority venire members with respect to death penalty views,[10] failure to voir dire in the area cited, and lack of relationship between the reason cited and the case.[11] *Flowers III*, 947 So. 2d at 921-30. Indeed, the

---

peremptory challenges given to each side to strike for the alternates.

[10] The State cited alleged negative views on the death penalty not only with respect to Ms. Lott (no. 12, S-3), as to whom they were expressly found to be pretextual because of disparate treatment of a particular white venire member (Ms. Carol Young, no. 13, and the fourth juror seated) with similar views, [Fl. II Tr. 1347-49], but also as the sole reason for its strike of Linda Yarbrough (no. 5, S-1) [Fl. II Tr. 1344] and a contributing reason for striking Gania K. Gray (no. 19, S-4) [Fl. II Tr. 1351] and Eugene Crockett, Jr. (no. 28, S-5) [Fl. II Tr. 1363], as well. The defense also identified several other potentially comparable Whites accepted by the State in its rebuttal. [Fl. II Tr. 1363]. The trial court made no findings about the disparate treatment identified as to the other White or African-American venire persons, thus leaving open the possibility that the same discriminatory pretext that infected one of the reasons for striking Lott also infected the strikes of others. See *Snyder v. Louisiana*, 128 S. Ct. at 1212. Though the *Batson* objection to this disparate treatment was not addressed in the appeal in *Flowers II*, in *Flowers III* the Mississippi Supreme Court was particularly troubled about the possibility that citing death penalty views of African-American jurors as a "non-racial reason" for striking them when similarly situated white jurors went unchallenged was very suggestive of pretext. 947 So. 2d at 921, 927, 939-40.

[11] For example, the reason credited by the trial court for the state strike of African-American venire member Gania Gray was that she suffered from and took medicine for panic attack disorder.

fact that the trial court failed to address most of these indicia at all would, if they were raised on appeal today, not even be available as rationales for the strike because of that failure to address. *Snyder v. Louisiana*, 128 S. Ct. at 1212.

31. Given the record, and, most importantly, the explicit findings of racial discrimination made by the trial court in this trial, it is beyond cavil that Mr. Evans abused the discretion accorded him by allowing him peremptory strikes in the second trial, and fully justifies an order depriving him of the opportunity to do so again.

Third Trial – February 2004 – Montgomery County – Supreme Court Finds Racial Discrimination 100% Of Minority Jurors Tendered Challenged By State, 100% Of Challenges Employed By State Used Against Minority Jurors Single Black Juror On Jury But Only Because State Exhausts Challenges Before She Is Tendered

32. Mr. Flowers' third trial, on four counts of capital murder, one for each of the four people found dead

---

[Fl. II Tr. 1351]. On the court's voir dire she said nothing about the condition affecting her ability to serve, only requested reassurance that she would be able to get her medicine if she were selected. [Fl. II Tr. 936]. The State did not voir dire her further on this particular medical condition, much as it never questioned venire member Cole regarding his alleged sleepiness or inattention. Similarly, African-American prospective juror Crockett was never voir dired by the state on his need to care for his dog, which the State cited as a reason it was striking him. [Fl. II Tr. 1353]. None of these alleged justifications had anything at all to do with the case, either.

at Tardy Furniture in 1996, was held in Montgomery County in February 2004. The State obtained convictions and death sentences on all four counts, but those convictions and sentences were reversed on appeal by the Mississippi Supreme Court, again for prosecutorial misconduct committed by District Attorney Evans.

33. Despite having been judicially rebuked for racial discrimination regarding reasons offered for peremptory challenges directed at two African-American venire members in the second trial, and having actually been judicially prevented from exercising one of them due to that racial discrimination, [Fl. II Tr. 1347-48; 1363-64], District Attorney Evans nonetheless persisted in his racially invidious conduct during jury selection in the third trial, conduct which was at the core of the reversal handed down by the Supreme Court. *State v. Flowers*, 947 So. 2d 910, 923-31 and 939-40 (Miss. 2007) (*"Flowers III"*) (finding that the prosecutor's racial discrimination in use of peremptory challenges warranted reversal either on basis of *Batson* alone or on *Batson* together with a panoply of other errors including recurrent prosecutorial misconduct of the same nature as had been previously condemned by the Court in *Flowers I* and *II*).

34. The District Attorney's demonstrated inability to obey the strictures against race discrimination in jury selection when they are pointed out to him after the fact necessitates this honorable court taking preemptive action to ensure that they cannot happen again. *In re Lewis*, 654 So.2d 1379, 1383 (Miss. 1995).

See also Miller-El v. Dretke, 545 U.S. 231 (2005), *Snyder v. Louisiana*, ___ U.S. ___. 128 S. Ct. 1203, 1212 (2008).

35. On its third attempt to convict Curtis Flowers, the State's Batson-violating "racial profiling," *Flowers III*, 947 So. 2d at 939, of the jury venire reached a new level. As in the first two trials, the prosecution exercised peremptory strikes against every single African-American prospective juror tendered to it to serve as either a regular or alternate juror exhausting all 15 of its strikes in doing so. *Flowers III*, 947 So. 2d at 918. The Court characterized the prima facie case created by this disproportion and the fact that all the strikes exercised by the state were against African-Americans "as strong a prima fiche [sic] case of racial discrimination as we have ever seen in the context of a *Batson* challenge." *Flowers III*, 947 So. 2d at 935.[12]

---

[12] Despite the prosecution's relentless efforts, a single African-American made it onto the jury panel at the end of this process, but only because the State had exhausted all its peremptory strikes at the point her name, and that of another African-American prospective juror who was belatedly disqualified for cause, came up in the jury pool. *Id.* at 918. *See also* Exhibit A. Hence, the pool of jurors that convicted Mr. Flowers in the third trial was, as the one in the second trial, less than 1% African-American. Even without comparing it to the pool of citizens from which it was drawn, this is a breathtaking anomaly in an era where the pool of major party candidates for the office of President of the United States is 50% African-American. More pertinently to the statistical improbabilities attending in the third failed conviction of Curtis Flowers, Montgomery County, where this jury was drawn from is 45% African-American. More pertinent still, of the 300 prospective jurors who responded to their jury summons and submitted questionnaires, 126 or 42% identified themselves as Black, 161 or 54% identified themselves as White, 3 or 1%

36. Because it exhausted all 15 of its strikes purging the jury of Blacks, it perforce accepted every white venire person tendered to it, including numerous white jurors whose views on the death penalty, and/or having family members who were prosecuted or convicted of crime (another favorite reason cited by the prosecution for striking black venire members in this and Mr. Flowers' other trials) were effectively indistinguishable from those of the continuous parade of African-American venire members being peremptorily stricken. *Id.* at 921, 929-3, 934. *See* Exhibit A.

37. In the end, the Court reversed because it found that the record established without a doubt that at least two of the African-American jurors struck had been struck racially discriminatorily, and that the reasons advanced by the State for doing so were unfounded by the record, or so clearly ignored in similarly situated white jurors, that the verdict the jury so constituted had reached was so tainted that it could not be allowed to stand. *Id.* at 936.

38. Though the Court did not find that all of the disparate treatment it observed was, standing alone, reversible error under *Batson*, it repeatedly noted that even those strikes it did not find to be reversible error were "problematic," *Flowers III*, 947 So. 2d at 929 or "suspect, as an undertone of disparate treatment exists in the State's voir dire of these individuals" *Id.* at 936,

---

identified themselves as belonging to another race, and 10 or 3% provided no information regarding their race. [Fl. III Record, Juror Questionnaires]

or, at the very least recognized as errors which, "viewed in the aggregate with others . . . result in cumulative error sufficient to warrant a new trial." *Id.* at 940 (Cobb, Presiding J., concurring in result only).

39. The stinging rebuke issued by the Court in *Flowers III* for a pattern of racially discriminatory prosecutorial behavior, even standing alone, fully warrants preventive action by this court to stop it from ever happening again. Moreover the methods by which that racial discrimination found in *Flowers III* was executed have continued even after the Court's admonishments that they must cease.

Fourth Trial – November 2007 – Montgomery County – Discriminatory Methods Persist 100% Of Challenges Employed By State Used Against Minority Jurors Racially Proportionate Jury Seated Despite State's Best Efforts To Prevent It

40. At the fourth trial of Mr. Flowers, also on all four counts of capital murder, the State announced prior to the beginning of jury selection that it would not be seeking to have the jury impose the death penalty in the event of a conviction. This was an entirely reasonable decision, given the fact that the verdicts in the first three trials were reversed under the heightened scrutiny standards of review applicable when a sentence of death is imposed, members of most of the victim families have publically [sic] stated that they do not insist on seeking the death penalty, and because of

the almost entirely circumstantial nature of the evidence implicating Mr. Flowers in this matter.[13]

41. In this trial, the jury and alternates selected were composed of five African-Americans (all on the regular jury) and nine Whites (two of them alternates. For the first time in the 10 years during which this case was tried and retried, this jury represented less than a 10% statistical variation from the racial composition of the pool of qualified jurors tendered to the parties for peremptory challenges. See juror questionnaires and juror strike lists on file in the Office of the Circuit Clerk of Montgomery County, Mississippi, incorporated herein by reference. *See also* Exhibit A (summarizing the information contained in those records.) This result, however, occurred despite the fact that the State persisted in its old patterns, not because it abandoned them.[14]

---

[13] The only evidence that has ever been offered against Mr. Flowers that qualifies as "direct" evidence of guilt is the testimony of a jailhouse snitch concerning a somewhat incriminatory statement Mr. Flowers allegedly made to the snitch. Over the course of the previous three trials the snitch gave so many inconsistent versions of what the conversation contained that the State would have had good reason to be concerned that it might not be credited as proof beyond a reasonable doubt by all jurors.

[14] Exhibit A shows that there were a total of 45 qualified venire members remaining on the panel after excusals and disqualifications for cause, 19 Black and 26 White. Of these 45, the State was called upon to review a total of 36,16 [sic] (or 44%) Black and 20 (56%) White. The strike sheets on file establish that the prosecutor exercised a total of 11 strikes, 10 during regular jury selection and one additional strike during alternate selection and that 100% of those strikes were made against African-American venire

42. As in *Flowers III*, in the fourth trial every strike that the State exercised was exercised against African-American prospective jurors and, conversely, the State approved every white venire presented to it for service on the jury – including two with their own or family members' criminal convictions and one who expressed scruples against the death penalty and revealed "liberal" associations in the juror questionnaire.[15]

43. Why, then, did the jury that resulted, not reflect the huge racial disproportion to the pool from which it was selected as the juries in the first three trials? First, and probably the most important, was the decision not to seek the death penalty. This deprived the State one of the two most prevalent reasons (the other being the juror's own or his family members' prior criminal involvement) it had cited in previous trials to justify its persistent attempts to strike every lack [sic] venire person it possibly could strike. It also consigned death penalty views to factors unrelated to

---

members. However, because there were more black qualified jurors on the panel than the State had strikes this did not result, as it had in the third trial, in a disproportionately white final jury.

[15] Juror questionnaires on file for white venire members Carol Ann Griffin, Charles Thomas Jones, and Malinda Tidwell show that Ms. Griffin had scruples against the death penalty as well as an association with at least one liberal – some would call it radical – group, PETA; that Mr. Jones had criminal involvement of both himself and a close friend; and that Ms. Tidwell had a family member who had been convicted of a crime.

the case, and thus potential "indicia of pretext" for that reason alone.[16]

44. Second, the "luck of the draw" put a disproportionate number of the African-Americans – 16 of the 19 on the qualified panel – in the first 36 jurors, and 12 of the 16 in the first 24 presented to the State for approval. This resulted in a panel that would have inevitably had at least four African-American jurors on it even if the state had elected to employ its remaining three strikes against African American prospective jurors (two unexercised during selection of the regular jury, one unexercised during selection of alternates), as it had the first 11. As it turned out, because the jury would in any event be relatively diverse and not grossly disproportionate to the racial makeup of the venire and the county from which it was summoned no matter how diligent any efforts by the state to racially

---

[16] As a consequence of this decision no voir dire was conducted about death penalty attitudes, nor were any venire members excluded for cause related to those attitudes prior to arriving at the panel of qualified jurors on which peremptories were exercised. Moreover, the Supreme Court had already cautioned in *Flowers III* that it found this a "troublesome" reason even when the death penalty was being sought, and only declined to find *Batson* error for those strikes in *Flowers III* because it elected to defer to the trial court's opportunity to observe intangible things such as physical mannerisms, vocal inflection or demeanor during voir dire on the subject that could have demonstrated that whites and Blacks with identical "on-paper" death penalty attitudes were in fact distinct from each other. *Flowers III*, 947 So. 2d at 922, 927. Without the somewhat precariously secured fig leaf of observing juror demeanor during voir dire, the prosecutor may have decided not to tempt an appellate court to reverse for *Batson* error yet again in the event of a conviction and appeal.

profile the venire were, no *Batson* challenge was made to any of the strikes the state did employ.

45. The fact that the discriminatory methods used could not and did not succeed in disproportionately excluding African-Americans in the fourth trial, however, does not mean that in the fifth trial the State should be allowed more bites at the discrimination apple. Indeed, the State's racially discriminatory jury selection conduct over the life of this litigation including in the fourth trial indicates that, if given the chance to discriminate in jury selection in the next trial, the State will take it, even in the face of judicial condemnation for having done so.[17]

46. The evidence from four separate trials, summarized in Exhibit A, tells a compelling story of the

---

[17] In the first and second trials – where there were fewer than 12 Blacks on the panel – the State apparently attempted to evaluate at least some white venire members individually and reject or accept on characteristics correlated to beliefs about the State's case, but made blanket racially determined decisions to reject all the Blacks it could. In the second trial, the court found the State racially discriminated in at least one of those strikes. In the third trial, it treated both groups categorically – accepting all white prospective jurors and rejecting all the African-Americans – and was reversed by the Supreme Court for doing so. In the fourth trial–where it had no statistical chance of preventing at least four African-Americans from serving – it did the same thing it had done in the first two trials, but in reverse: made blanket racially determined decisions to accept all available Whites as jurors, but made individual determinations with respect to African-Americans. In all its variations, however, this was "racially profiling jurors" in order to make its peremptory strikes, and that is what the Mississippi Supreme Court has expressly held that *Batson* condemns. *Flowers III*, 947 So. 2d at 939.

State's persistent racial discrimination extending over the entire course of this litigation. As that table makes clear, even including the five African-American jurors who served in the fourth trial, the State's tactics have succeeded in excluding 88% of the qualified African-American jurors available to try Mr. Flowers from serving on the juries selected to do so, while excluding fewer than 8% of the available qualified Whites from that participation.

47. It has achieved this stunning and statistically improbable result by exercising its peremptory strikes against African-Americans four times more often than it has exercised them against whites – by either using peremptories only against African-Americans or using them against Whites only where there are no remaining black jurors against whom the strikes might be employed, or by doing both. As a result, overall, only 13% of the jurors who sat in judgment on Mr. Flowers have been African-American, though they have been drawn from a pool of qualified venire members that has contained twice that proportion of qualified Blacks. Exhibit A. Twice, judges have found that the Stated [sic] has achieved these numbers by engaging in intentional racial discrimination. *Flowers III*, 947 So. 2d at 929, 936; [Fl. II Tr. 1347-49; 1355-63].

48. The evidence in the record allows no conclusion other than that the State has intentionally discriminated in the past, and has persisted in doing so even after being judicially told not to, and will continue doing so in the fifth trial if this court does not take the means for doing so from him in advance. The integrity

of the very process, as well as the dignity and civil rights of the citizens who present themselves for the often onerous duty of sitting in judgment on [sic] their fellow men and women, demands no less. *Powers v. Ohio*, 499 U.S. 400, 412 (1991); Georgia v. McCollum, 505 U.S. 42, 49 (1992); *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, (1991); *State v. Flowers*, 947 So. 2d 910 (Miss. 2007).

II. MOTION IN THE ALTERNATIVE TO BAR THE SEEKING OR IMPOSITION OF THE DEATH PENALTY IN THE EVENT OF CONVICTION IF THE STATE IS PERMITTED TO USE PEREMPTORY CHALLENGES

49. Even if this court feels it cannot remedy the near-certainty of continued discriminatory abuse by the State of its peremptory strikes by premptively restricting or taking away its right to use them in the upcoming trial, it can still reduce the chance that abuse will occur by reproducing the conditions under which the state's discriminatory conduct has less chance of achieving a discriminatory result – i.e. by prohibiting the state from seeking the death penalty in this trial, as the state voluntarily declined to do in the fourth.

50. The defendant is filing herewith two other motions (Motion To Bar The Death Penalty Based On Prosecutor Vindictiveness And Misconduct and Motion To Bar Death Qualification Of Jurors) seeking this same remedy for other reasons as well, and incorporates the contents of those motions herein by reference.

However, even if this court were to deny those motions, it should grant the relief sought for the reasons set forth in this motion, alone.

51. As is set forth in some detail at paragraphs 39-46, and accompanying footnotes, *supra*, incorporated hereing [sic] by reference, the absence of the death penalty in the fourth trial resulted – despite the prosecutor's using potentially discriminatory methods – in the selection of a jury that was more racially diverse and proportionate to the pool from which it was drawn than any jury selected when the death penalty was on the table.

52. By contrast, when the death penalty is on the table, the juries that sat were grossly disproprionate [sic] to the racial make up of the pools from which they were drawn, overall showing an average of a mere 7% of the total jurors serving being African American, whereas the average pool from which they were struck was 24% black – a more than threefold disparity. Exhibit A.

53. Hence, even if the court feels it cannot abrogate a statutory right and restrict the prosecutor's use of his discretionary strikes, it can ameliorate much of the harm he might do by simply precluding the death penalty, and consequently precluding any death qualification of the jury or voir dire concerning death penalty attitudes, and thereby removing some of the most troubling tools for concealing *Batson* mischief that the Mississippi Supreme Court and the trial court in this very case have identified as having tainted the jury

selection in past trials. *See Flowers III*, 947 So. 2d at 929, 936; [Fl. II Tr. 1347-49; 1355-63].

54. The Defendant incorporates herein by reference the official record and Clerk's files of the four previous trials in this matter as they pertain to the selection of the juries in said trials, including all matters on file in the office of the Circuit Clerk of Montgomery County, Mississippi and/or under the custody of the Clerk of the Supreme Court of Mississippi, and seeks that these materials be made part of any record on appeal of any conviction obtained in the fifth or any other future trial of this matter in the event the relief sought in this motion is not granted in full.

WHEREFORE, premises considered, the defendant respectfully requests that this honorable Court bar the prosecution from using peremptory strikes at all, or at least from using them against non-white venire members during jury selection, or in the alternative that it bar the seeking or imposition of the death penalty in the event of conviction.

Respectfully submitted,

CURTIS GIOVANNI FLOWERS, Defendant

By: /s/ Andre de Gruy
Attorney for Defendant

Andre de Gruy, MB # 8679
Ray Charles Carter, MB # 8924
Alison Steiner, MB # 7832
Office of Capital Defense Counsel
510 George Street, Suite 300
Jackson, MS 39202
601-576-2316

[Certificate Of Service Omitted]

EXHIBIT A
To Defendant's
Motion To Bar The Prosecution From Exercising Peremptory Strikes, etc.
(Filed Sep. 12, 2008)

Jury Selection Data – State v. Flowers 1997-2007

	Total	Black	% b		White	
			of pool struck	of strikes used		of po stru
ed	36	5	14%		31	
trikes	12	5	100%	42%	7	23%
	14	0	0%		14	
ed	30	5	20%		25	
trikes	7	5*	100%	71%	2	8%
	14	1*	7%		13	
ed	45	17	38%		28	
trikes	15	15	100%	100%	0	0%
	15	2†	15%		13	

ed	36	16	44%		20	
trikes	11	11	68%	100%	0	0%
	14	5	36%		9	

* The trial court found that all justifications advanced for the striking of one of the five African-American venire members tendered to the state during the second trial were pretextual. Therefore, though all five African-Americans were challenged by the state, one of them was nonetheless seated on the jury.

† Both African-Americans selected as jurors during the third trial were selected after the State had already exhausted all then-available peremptory strikes. Only one actually deliberated, however, after one of the two was disqualified for cause after being selected for the regular jury. He was replaced by one of the three white alternates selected after the State had exhausted all three of its available alternate-strikes on African-American venire persons.

‡ See above notes, which account for all three of these individuals.

§ See above notes, which account for three of these eight individuals.

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI	PLAINTIFF
V.	CAUSE NO. 2003-0071-CR
CURTIS GIOVANNI FLOWERS	DEFENDANT

NOTICE OF RENEWAL AND ADOPTION OF MOTIONS FROM THE PREVIOUS FIVE TRIALS

(Filed Apr. 9, 2010)

Comes now, Curtis Flowers, by and through the undersigned counsel and adopts and renews all motions filed in previous trials of this matter, and incorporates them and the renewal of them into the record of the instant sixth trial:

First Trial: (Motions filed during representation by Hon. John Gilmore)

1. Motion for Speedy Trial.
2. Motion to Control Prejudicial Publicity.
3. Assertion of Rights to Be Present.
4. Motion for Special Venire.
5. Motion for Process Instructions.
6. Motion for an Order Requiring that juror Questionnaires [sic] is Sent with Juror Summons to Each Prospective Juror.
7. Motion to Prohibit Jury Dispersal.

8. Motion to Invoke the Rule Prior to Voir Dire and to Enjoin District Attorney from Advising Witnesses of Previous Testimony.

9. Motion to Adjourn at a Reasonable Time.

10. Motion for Opportunity to Rehabilitate any Prospective Juror who Expresses Reticence when asked to Kill a Fellow Human Being.

11. Motion to Sequester Jurors Prior to and During the Trial of this case.

12. Motion to Preclude the Sheriff [sic] Department from Bringing the Defendant in Court in Shackles, and to Limit the Number of Uniformed Officers in the Courtroom While Sitting as Spectators.

13. Motion to Enjoin Victims' Family from Showing Emotion in the Courtroom while Sitting as Spectators.

14. Motion to Bar Admission of Inflammatory and Prejudicial Matters Concerning the Victim.

15. Motion for Discovery of any Possible Basis for Disqualification of the Prosecuting Attorney.

16. Motion for Disclosure of any Possible Basis of Judicial Recusal.

17. Motion to Preclude the Prosecution from Seeking to Rely on Miss. Ann. Section 99-19-101(7)(b),(c) and (d).

Second Trial: (Motions filed during representation by Hon. Chokwe Lumumba)

18. Motion to Preclude Admission of Gruesome and Highly Prejudicial Color Photographs of the Deceased.

19. Motion for Discovery of Information regarding State Experts.

20. Motion for Discovery of Information Necessary to Receive a Fair Trial.

21. Motion for Notice of Aggravating Circumstances and for Disclosure of Evidence Supporting Mitigating Circumstances.

22. Motion for Individual Sequestered Voir Dire.

23. Motion to Suppress Witness Statements.

24. Motion for Additional Peremptory Challenges.

25. Motion to Place Additional Questions on the Jury Questionnaire.

26. Motion to Dismiss for Violation of Defendant's Rights under MCA 99-17-1.

27. Motion to Bar Use of Certain Aggravating Circumstances.

28. Motions to Suppress Evidence.

29. Motion in Limine to Exclude Defendant's Prior Convictions from Evidence and Testimony.

30. Motion in Limine to Preclude Hearsay Testimony of Prosecution Witnesses

31. Motion to Suppress Statements.

Third Trial: (Motions filed during representation by Office of Capital Defense Counsel)

32. Motion for Twenty-Four Hour Cooling-Off Period, etc.

33. Motion to Preclude the State from Introducing Victim Impact Evidence

34. Motion to Sequester Jurors Prior To And During The Trial Of The Case

35. Motion for Rap Sheets and NCIC Reports

36. Motion to Discover Information Regarding Potential Jurors

37. Demand for Notice of Any Bad Acts That The State May Wish To Use At The First Phase Of This Trial

38. Motion to Assure that Mitigating Circumstances Receive Their Due Weight and Attention From The Jury

39. Motion To Disclose The Past And Present Relationships, Associations And Ties Between The District Attorney And His Staff To Law Enforcement Agengies [sic] And Prospective Jurors

40. Motion To Demur Or Quash Or Dismiss Indictment For Failue [sic] To Allege An Aggravating Circumstance, etc

41. Motion to Declare Miss. Code Ann. § 97-3-19(2)(e) Unconstitutional, etc

42. Motion For Order To Produce Kyles Information

43. Motion To Preclude Unreliable and Untrustworthy Snitch Testimony

44. Motion To Bar Trials On Untried Cases, etc

45. Motion For Jury Questionnaire

46. Objection To Proposed Juror Information Questionnaire And Suggested Changes

Fourth Trial: (Additional motions filed during representation by Office of Capital Defense Counsel)

47. Motion For Complete And Up To Date Criminal Histories Of Any Potential State's Witness

48. Motion For Disclosure Of Evidence Regarding "Snitch"

49. Motion To Produce Any And All Information Gathered By Any Agent Of The State Concerning The Homicides At The Tardy Furiture [sic] Company Including But Not Limited To All Information Generated As A Result Of Rewards And All Suspects Regardless Of Source Of Information

50. Motion To Preclude Introduction Of Victim Impact And Character Evidence

51. Motion To Determine Admissibility Of Testimony From Expert On Eyewitness Identification (with supporting affidavit)

52. Motion That The Judge Use Open-Ended And Non-Suggestive Questions When Querying The Jury On Views Of Death, Speak In The Alternative About Verdicts And Penalties That Might Be Imposed, And Minimize

Signals That The Prosecutor Is The Secondary Authority Figure In The Courtroom

53. Motion For Broad Leeway To Inquire About Publicity; About Actual Feelings, Opinions And Knowledge; About Juror's Ability To Adequately Accord Respect To Decision-Making Of Others; About Racial Bias; And To Probe Juror's Understanding Of The Concept Of Mitigation

54. Motion That Judge Not Telegraph Or Foreshadow Responses That Might Result In Disqualification Or Dictate To Jurors Any Requirement That They Must Follow The Law Before Fully Developing The Feelings, Biases, Opinions Or Prejudices The Juror May Hold With Respect To The Death Penalty

Fifth Trial: (Additional motions filed during representation by Office of Capital Defense Counsel, the request for hearings on which are all renewed as well)

55. Defendant's Statement Of Motions Adopted From The Previous Four Trials

56. Motion To Preclude "Death Qualification" Of Jurors Or In The Alternative To Preclude The Imposition Of The Death Penalty

57. Motion To Bar The Prosecution From Exercising Peremptory Strikes At All, Or At Least From Exercising Them Against Non-White Venire Members, During Jury Selection Or In The Alternative To Bar The Seeking Or Imposition Of The Death Penalty In The Event Of Conviction

58. Motion To Preclude Persons Who Have Previously Served As Jury Bailiffs From Serving As Such In The Present Trial

59. Defendant's Renewal Of, And Request For Hearing On, Motion To Determine Admissibility Of Testimony From Expert Of Eyewitness Identification

60. Motion To Bar The Death Penalty Based On Prosecutor Vindictiveness And Misconduct

61. Reservation Of Right To File Further Motions.

Defendant further renews and preserves all issues raised in motions filed after the fifth trial in this matter which have heretofore been ruled upon by the Court

Respectfully submitted,

CURTIS GIOVANNI FLOWERS,
Defendant

By: /s/ Alison Steiner
Attorney for Defendant

Ray Charles Carter, MB # 8924
Alison Steiner, MB # 7832
Office of Capital Defense Counsel
510 George Street, Suite 300
Jackson, MS 39202
601-576-2316

NOTICE OF HEARING

Please take notice that the above motion will come on to be heard before the Hon. Joseph Loper, Jr.,

Circuit Judge, in the Circuit Courtroom of the Montgomery County Courthouse on Tuesday, April 20, 2010 at 10:00 a.m., or as soon thereafter as counsel may be heard.

NOTICED this the 8th day of April, 2010.

/s/ Alison Steiner
Attorney for Defendant

[Certificate Of Service Omitted]

IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED 1036-1186 VOLUME 31 of 47

EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM: Circuit Court

COUNTY: Montgomery

TRIAL JUDGE: Joseph H. Loper Jr.

::::::

* * *

[792] And Number 17. Miss Chesteen.

JUROR PAMELA CHESTEEN: Yes, sir. Roxanne and I were friends in high school. I spent some time at their home.

And also, I knew Archie and Lola. And I know Archie and Lola and the girls and Archie, Jr., from the bank. And Shirley Golden.

THE COURT: And is Shirley Mr. Golden's widow?

JUROR PAMELA CHESTEEN: (Nodded.)

THE COURT: Would these factors influence you [793] or affect you in being a fair and impartial juror in this case?

JUROR PAMELA CHESTEEN: I will do my best.

THE COURT: Is there any doubt in your mind, but what you could lay anything – because, you know, it seems like you know family on both sides of the situation. And can you lay any of those factors aside and base your decision only on the evidence presented here in court?

JUROR PAMELA CHESTEEN: If it can be proven then I, I could go along whatever –

THE COURT: I mean you are going to follow the proof. And if it shows Mr. Flowers guilty, you would

vote that way. If it shows that he is not guilty, you will –

JUROR PAMELA CHESTEEN: (Nodded.)

THE COURT: Or if the State does not prove their case, you would vote him not guilty.

JUROR PAMELA CHESTEEN: (Nodded.)

MR. CARTER: I didn't hear that, ma'am. What was your answer?

JUROR PAMELA CHESTEEN: I will do my best to – I will go with whatever the evidence is, the proof.

THE COURT: What I'm saying, you would vote not guilty if the State didn't prove their case; is that correct?

JUROR PAMELA CHESTEEN: Yes.

THE COURT: And then if the State proved beyond a reasonable doubt, you would vote that way.

[794] JUROR PAMELA CHESTEEN: (Nodded.)

THE COURT: So – okay. Thank you.

* * *

[861] I'll continue now with some questions from the Court.

I want to know if any of you are related by blood or by marriage to Derrick Stewart or if any of you knew

Derrick Stewart during his lifetime. I believe his nickname was Bobo. Are any of you related by blood or by marriage to Mr. Stewart or any of you that knew Mr. Stewart during his life, if you would please stand.

* * *

[862] And then Number 29. Mr. Waller, and you –

JUROR HAROLD WALLER: I just knew him through school. He went to school with my daughter. He was younger, but I know him and know his dad and mother and aunt.

THE COURT: And would that influence you or affect you in being a fair and impartial juror in this case?

JUROR HAROLD WALLER: No, sir.

THE COURT: And would you lay aside any knowledge you have of anybody and base your decision only on the evidence presented here in court?

JUROR HAROLD WALLER: Yes, sir.

[863] THE COURT: Okay. Thank you.

Then Number 50. Mr. Lester, and you knew Mr. Stewart.

JUROR BOBBY LESTER: Indirectly. My wife is a first grade teacher. He was in her class.

THE COURT: Would that influence you or affect you in being a fair and impartial juror in this case?

JUROR BOBBY LESTER: No, sir.

THE COURT: Okay. Thank you.

* * *

[905] Next one would be Dr. Steven Timothy Hayne. Do any of you know Dr. Hayne?

The next one would be Barry Eskridge. E-s-k-r-i-d-g-e.

Okay. Number 14. 17. And 18. And 5. Number 22. 29. 50. 50. 54. 58. 63. 67. 68. 69. 51. 76. 80. 80. 94. 111. 110. 120. 124. 121. 137. And 149.

Of those that have said that you know Mr. Eskridge, is there any of you that would give his testimony any greater or lesser weight and credibility than somebody you did not know or would the fact that he is a potential witness in this case influence you or affect you in any way in being a fair and impartial juror?

The next one would be Miss Melissa Schoene.

* * *

[906] And the next witness is going to be Bill Thornburg. He was sheriff in this county or deputy sheriff for a long time as well.

Okay. Number 6. 11. 12. 14. 17. And 18. 8. Number 38. 40. 22. 41. 42. 33. 34. 54. 29. 45. 44. 62. 59. 51. 50. 67. 72. 68. And 69. 76. 63. 91. 94. 93. And 92. 96. 80. 103. 123. 124. 126. 120. 115. 111. 98. 136. 137. 152. 121. 130. 110. 132. 127. 147. 128. 148. And 149.

[907] Now, those of you that know who Sheriff Thornburg is, would the fact that you know him cause you to have any greater weight – give his testimony greater weight or credibility of somebody that you do not know? Or would it affect you in any way in being a fair and impartial juror in this case?

* * *

[908] Elaine Gholston. Number 14 and 136.

Of those that know Miss Gholston, would the fact that she potentially could be a witness in this case influence you in any way or affect your ability to be fair and impartial or cause you to give her testimony greater or lesser weight and credibility than anybody [909] you do not know? Would that affect you in any way? Where is Number 14?

JUROR CAROLYN WRIGHT: No, sir.

* * *

Patricia Hallmon Sullivan Odom. Any of you know Miss Hallmon Odom?

Doyle Simpson.

Okay. Number 5. 14. 30. Did I see 30? Okay. 33. 17. 53. 50. 68. 44. 45. 62. 136. 95. 130. And 127.

Of those of you that know who Doyle Simpson is, would any of you be affected by his testimony where you [910] would give his testimony greater weight or credibility than somebody you did not know? Or would

that influence you or affect you in being a fair and impartial juror?

* * *

Odell Hallmon. Do any of you know Odell Hallmon?

Number 62, and would the fact that you know Mr. Hallmon influence you or affect you or cause you to give his testimony greater weight or lesser weight or credibility than somebody you did not know?

JUROR DIANE COPPER: No.

THE COURT: Okay. Thank you.

And Charles Porky Collins. Mr. Collins is deceased. He will be – his testimony will be read into evidence, but he will not be testifying live.

Number 56. I'm sorry. There are several of you. Number 5. 14. 16. 17. 11. 29. 50. 51. 22. 56. 68. 69. 72. 56. 75. 59. Number 80. 121. 137. 115. 76. 94. 91. 111. And 132.

Of those that indicated that you know Mr. Collins or knew him during his life, is there any of you that would give his testimony greater weight or credibility than that of somebody you did not know or would the fact that you know him be a factor or influence you in any way?

* * *

[912] The next person would be Jerry Dale Bridges. He is a constable in the county, and he is a

potential witness. Again, it is not positive, but he could potentially testify.

Number 2. And 6. And 12. 14. 16. 17. And 18. 8. 38. 40. 22. 26. 29. 33. 41. 42. 50. 51. 72. 54. 56. 44. 45. 59. 63. 62. 67. 68. 69.

* * *

Of those of you that indicated that you know Mr. Bridges, is there any one of you that would just by the fact that you know him automatically give his testimony greater weight or credibility than somebody that you did not know or would any of you be influenced where you could not be a fair and impartial juror by the mere fact that you do know Mr. Bridges?

The next one is Randy Keenum. Do any of you know Randy Keenum?

Okay. Number 17, 18, 22, 26, 29, 50, 68 and 69, 65, 80. I got 65.

* * *

[913] Of those of you that indicate that you do know Mr. Keenum, is there any of you that would give Mr. Keenum's testimony greater weight or credibility than that of a witness that you did not know? Or is there any one of you who because you might know Mr. Keenum that would influence you and affect you in being a fair and impartial juror in this case?

And Randy Stewart. I think his name has been mentioned as being related to one of the victims, Derrick Bobo Stewart. But if any of you know Randy

Stewart, who had not already raised your card or let us know that, then if you will do that at this time.

Number 29. And Number 50, 22. Anyone else?

And I'll ask this to those who just held their card up and also to those who earlier indicated they might know Mr. Stewart. Is there any one of you that would give his testimony greater weight or credibility than somebody that you do not know or would any of you have a situation where because you know Mr. Stewart it would affect you where you could not be a fair and impartial juror?

Next one – and I assume this would be Willie Golden, Jr., is that correct, from the State?

* * *

[915] And Bennie Rigby. I know Bennie Rigby's name has been mentioned as well. Anybody who has not already indicated that they know Bennie Rigby, if your card will please be held.

17. 18. 14. 33. 67. 69. 51. 108. 65. 120. 115.

For those of you who just held your cards up and those that have already indicated previously that you know Mr. Rigby, would any of you be affected by Mr. Rigby's testimony or give his testimony greater weight or credibility than somebody that you do not know? Or would his testimony in any way affect any of you in being a fair and impartial juror?

John Johnson. How many of you would know John Johnson?

Okay. That would be Number 2. 5.

I got, you, Number 5.

17. 18. 12. 22. 33. 38. 29. 50. 51. 54. 59. 62. 45. 67, 8 and 69. And 72. 124. 123. 121. 120. 119. 80. 115. 115. 137. 76. 95. 94. 111. 91. 132. 128. 127. 147. And 149.

For those of you that have indicated that you know Mr. Johnson, is there any of you that would give his testimony greater weight or credibility than somebody that you do not know? Or would the fact that he is a witness in this case influence or affect you in being a fair and impartial juror?

Okay. The next one would be Horace Wayne Miller. He is a retired investigator, I think, for the [916] Mississippi Department of Public Safety or State Highway Patrol, what we used to call the patrol. Any of you know Mr. Miller?

Okay. Number 11. 50. 29. 63. And 111. Those of you that know Mr. Miller, would the fact that you know Mr. Miller cause you to give his testimony greater weight or credibility than somebody that you do not know or would that in any way affect you in being a fair and impartial juror in this case?

Jessie Sawyer. Do any of you know Jessie Sawyer?

Okay. Number 8. 14. 17. 6. 33. 34. 44. 41. 45. 62. 50. 53. 69. 103. 121. 69. 65. 98. 136. 95. 110. 127. 128. 147. And 148.

Is there any of you that know Mr. Sawyer that just by the mere fact you know him it would affect you in

being a fair and impartial juror or affect – or would you automatically give his testimony greater or lesser weight and credibility than somebody that you did not know?

Sarah Barrentine. Any of you know Sarah Barrentine? Okay. That would be Number 5. 17. And 18. 50. 69. 80. 121. And 94.

Those of you that know Sarah Barrentine, would any of you give Miss Barrentine's testimony greater weight or credibility just because you know her or would that influence you or affect you in any way in being a fair and impartial juror in this case?

* * *

[918] Okay. Vincent Small. Any of you know Vincent Small.

Okay. 14. 16. 17. 18. Number 1. 6. 29. 33. 41. 44. 45. 50. 53. 62. 67. 68. 69. 72. 65. 120. Number 80. 115. 136. 137. 96. 95. 92. 94. 111. 149. 148. 128. 147. 127. And 110.

Of those of you that indicate you know Vincent Small, is there any one of you that would give his testimony greater or lesser weight or credibility than somebody you do not know? Or would any of you be influenced or have your ability to be fair and impartial influenced by the fact that you do know him?

James Taylor Williams.

Okay. Number 5. 2. 11. 14. 16. 17. 18. 22. 42. 29. 50. 54. 59. 67. 68. And 69. 72. 75. 76. 94. 111. 80. 115. 119. 120. 137. 108. 124. 121. 110. 132. And 149.

* * *

[920] THE COURT: Liz Vanhorn. Liz Vanhorn.

5. 14. 16. 17. 18. 22. 29. 33. 45. 62. 42. 57. 56. 51. 54. 53. 72. 50. 59. 63. 67. 68. And 69. 65. 75. 76. 87. 91. 92. 80. 108. 124. 121. 120. 119. 137. 136. 115. 95. 94. 96. 111. 147. 110. 127. 128. 132. 148. And 149.

Of those of you that know Liz Vanhorn, is there any one of you that would have a situation where you would give her testimony greater weight or credibility than somebody that you do not know? Or would the fact that she might be a witness influence or affect any of you in being a fair and impartial juror in this case?

Okay. How about Dennis Woods? Any of you know Dennis Woods?

Number 2. Number 5. Number 6. 14. 16. 17. 22. 25. 29. 33. 41. 50. 55. I'm sorry. 53. 57. 44. 45. 62. 67. 68. 69. 65. 91. 94. 95. 96. 92. 110. 119. 120. 115. 127. 128. 136 and 37. 111. 147. And 148. And 149. And 154.

Is there any one of you that know Mr. – the mere fact that you know who Mr. Woods is would affect you in [921] being a fair and impartial juror or where you would automatically give his testimony greater weight or credibility than somebody that you did not know just strictly because you do know Mr. Woods?

Okay. Emmitt Simpson. Any of you know Emmitt Simpson? Okay. Number 14, 16, 17, 6, 33, 50, 53, 65, 110, 127, 147, 128, 136 and 118.

Of those of you that know Mr. Simpson, is there any of you that would give his testimony greater weight or credibility than somebody that you did not know, or would you automatically know that you could not be fair and impartial because of the possibility of him being a witness in this case?

Okay. How about Shawn Eskridge? Anybody know Shawn Eskridge?

* * *

[922] That would be Number 5. 14. 16. 17. 50. 54.72.

Is there any one of you that because you know Vera Latham you would automatically give Vera Latham's testimony greater weight or credibility than somebody that you did not know or would any of you have a situation where your ability to be fair and impartial was affected because of knowing Vera Latham?

Okay. And Frank Ballard.

Okay. Number 5. Some of you may have already spoken up. If you hadn't as to Frank Ballard –

Number 5. Number 12. 17. 22. 50. 25. 45. 65. 72. 69. 63. 137. 111. 94. And 149.

Of those of you that know Frank Ballard, is there anything about just the fact that you know him that

would influence you or affect you in being a fair and impartial juror? Or is there any one of you that just because you know him that would affect you in being a fair and impartial juror in this case?

Mary Jeanette Fleming. Any of you know Mary Jeanette Fleming?

* * *

[923] JUROR CAROLYN WRIGHT: Mary Jeanette Fleming. Then Mary Ella Fleming.

* * *

THE COURT: Then Number 14, would the fact that you know Miss Fleming influence you or affect you in any way?

JUROR CAROLYN WRIGHT: No, sir.

THE COURT: Miss Wright, would that –

JUROR CAROLYN WRIGHT: Oh, no, sir.

THE COURT: Okay. Mike McSparrin. M-c-S-p-a-r-r-i-n. Mike McSparrin. Or McSparrin. Essa Ruth Campbell. Essa Ruth Campbell. Connie Moore.

Okay. 14. 16. 17. I got 14. 53 over there. 65. 45. 62. 134. 41. 110. 128. 148 and 147.

Of those of you that know Connie Moore, would the fact that you know Connie Moore influence you or affect you or in any way cause you to believe the testimony of Connie Moore over that of somebody that you did not know?

* * *

[924] Okay. Reverend Billy Little.

Okay. Number 29. Number 11. Number 126. Number 80. Number 132 and 111. And Number 18.

Is there any one of you that would just because you happen to know Billy Little, Reverend Little, that would automatically give his testimony greater weight or credibility than somebody that you did not know or would any of you have a situation where your ability to be fair and impartial would be tested or where you couldn't be fair and impartial because of knowing him?

[925] Okay. And this is another person whose name has been mentioned already. But if you haven't spoken up as to knowing her. Cora Felicia Flowers Tyson. Her last name is Tyson now apparently. Any of you that have not spoken up about knowing Felicia Flowers Tyson?

Okay. 33. 45. 62. 115. 110. 147. Are you just fanning, 14?

JUROR CAROLYN WRIGHT: No, sir.

THE COURT: Okay. 14. And 16.

For those and all – anybody else that might know Miss Flowers Tyson? Is there any one of you that would give her testimony greater weight or credibility than somebody that you do not know or would the fact that she was a witness in this case cause any of you to be where you could not be a fair and impartial juror?

* * *

Angela Flowers Jones. Any one of you know her that has not already spoken up?

Number 17 and Number 53.

And if Miss Jones is a witness in this case, is there any one of you that would let that influence you or affect you in being a fair and impartial juror or would [926] you give her testimony greater weight or credibility than that of someone you did not know?

Then I know we have already mentioned Lola Flowers. That's Mr. Flowers' mother. Is there any one of you that know her who have not already spoken up about knowing Miss Flowers? Is there any one of you –

Number 62, were you saying you knew Miss Flowers?

JUROR DIANE COPPER: I know her. His mother.

THE COURT: Okay. And anybody else or anybody that hadn't spoken up about knowing her already?

41. Okay. And Number 33.

Is there any one of you that know Miss Lola Flowers either that have held your card up or already indicated that because of knowing her you could not be a fair and impartial juror or would automatically give her testimony greater weight or credibility than that of somebody you did not know?

And Archie Flowers. Of course, I think it has been established that he is Mr. Curtis Flowers' father. Any of you know Archie that have not already spoken up previously?

Number 5. 6. 14. 16. 41. 33. 53. 41. 62. 69. 65. 94. 92. 115. 136. 138. 154. 128. And Number 147.

Those of you that know Archie and those of you that have spoken up already about knowing him, is there any one of you that because he might testify you would give his testimony greater weight or credibility than that of somebody you do not know? Or would you have any [927] difficulty being a fair and impartial juror because he might testify as a witness?

And next one would be Archie Renaldo Flowers. Is that – is that Mr. Curtis Flowers' brother, Defense Counsel?

MRS. STEINER: Yes, Your Honor.

THE COURT: Okay. Is he also known as Archie, Jr.?

MRS. STEINER: Yes.

THE COURT: Okay. Any of you know – I'll just call him Archie, Jr., because I have heard several refer to him that way today. Any of you that know him that have not already made that known?

Okay. Number 5. 67. 69. Number 6. Number 8. Number 34. 62. 136. 110. 127. 128. 147. 148. And 154.

Of those of you that know Mr. Flowers, is there any one of you that would have that influence you or affect you in being a fair and impartial juror or give his testimony greater weight or credibility than somebody that you do not know?

How about Crystal Gholston?

* * *

[928] Latarsha Blissett.

Okay. Number 5. Number 17. 62. 95. Number 50. Anybody else that knows Latarsha?

Of those of you that know Latarsha Blissett, would any of you have a situation where that would influence you or affect you in being a fair and impartial juror? Or would any of you give Blissett's testimony greater weight or credibility than somebody that you did not know?

Harvey Christopher Freelon. Anybody know Harvey Christopher Freelon?

Stacey Wright.

Number 5. 16. 8. 14. 16. 45. 41. 62. 95. 127. 148. 136. And 154.

Those of you that know Stacey Wright, is there any of you that would give Stacey Wright's testimony greater weight or credibility than that of somebody you did not know? Or is there any one of you that would be affected in any way by that?

* * *

[929] Alphonsos Alexander. Any of you know Alphonsos Alexander? Number 16. 17. 154. 137.

Anyone else?

Of those of you that know Alphonsos Alexander, is there any one of you that would give that testimony greater or lesser weight or credibility than somebody that you did not know? Or would any of you be influenced where you couldn't be fair and impartial if that person were to testify?

* * *

[930] Jimmy Lewis Forrest.

14. 16. 17.

A JUROR: Is he a reverend?

THE COURT: Ma'am.

A JUROR: Reverend Jimmy Lewis?

THE COURT: Is, is Jimmy Lewis a reverend?

MRS. STEINER: Yes.

THE COURT: Okay. He is. His title was written out here. 14. 16. 17. 33. 34. 53. 50. 44. 45. 62. 65. 80. 115. 98. 136. And 138. And 127. 110. 128. 147.

Of those of you that indicated that you might know Reverend Forrest, is there any one of you that would [931] automatically give his testimony greater weight or credibility, or any of you that would be influenced by

that testimony where you could not be a fair and impartial juror?

How about Nelson Forrest? Any of you know Nelson Forrest?

Okay. Number 14. 16. 17. Number 2. 33. 34. 44. 45. 50. 41. 53. 62. 68. 69. 72. 65. 80. 115. 98. 136. 137. 138. Did I say – no. Number 121. 94. 111. 110. 128. 127. 147. 149.

Of those of you that know Nelson Forrest, is there any one of you that just because you know Nelson Forrest would automatically give his testimony greater or lesser weight and credibility than somebody you do not know or would any of you have a situation where you could not be fair and impartial because of that?

* * *

[932] Okay. Anybody know Hazel Jones?

14. 16. 17. 18. 5. 33. 53. 50. 45. 41. 62. 65. 80. 115. 154. 87. 95. 94. 110. And 128.

Of those of you that know Hazel Jones, is there any one of you that would give Hazel Jones' testimony greater weight or credibility than somebody that you do not know, or is there any one of you that would have your ability to be fair and impartial where you couldn't be fair and impartial because of knowing Hazel Jones?

Henry Stansberry. Do any of you know Henry Stansberry?

Number 17.

Any one else know Henry Stansberry?

Would the fact you know Henry Stansberry influence you or affect you in being a fair and impartial juror, or would you give that testimony greater weight or credibility than somebody you did not know?

JUROR PAMELA CHESTEEN: No.

THE COURT: Okay. Robert Merrit.

Number 5. 16. 6. 29. 53. 95. 127. 154. And 136.

Of those of you that know Robert Merrit, is there any one of you that would have that affect your ability [933] to be fair and impartial or give his testimony greater weight or credibility than somebody you did not know? Larry Smith. Okay.

I believe you two know everybody. And I appreciate you holding your hand up every time, but y'all are obviously well-known and well-liked people in the county.

14. 16. 41. 62. 69. 95. 115. 110. 127. 147. 128. 148. 137.

Of those of you that know Larry Smith, is there any one of you that would give that testimony greater weight or credibility than somebody that you did not know, or would any of you have a situation where you just feel you couldn't be fair and impartial if Larry Smith was a witness?

Frances Hayes. Anybody know Frances Hayes?

And number 14. 16. 62. 80. And 115.

Of those of you that know Frances Hayes, is there any one of you that would automatically give that testimony greater weight or credibility that you – of somebody that you did not know? Or is there any one of you that could not be fair and impartial because of that?

Robert Campbell.

Latoya Campbell Harding.

Kittery Jones. Okay. Number 5. 16. 17. 95. 53. And 72.

Of those of you that –

And 154.

Of those of you that know Kittery Jones, is there any one of you that feel like you would give that [934] testimony greater weight or credibility than somebody you did not know, or is there any one of you that would be influenced where you couldn't be fair and impartial just because of knowing Kittery Jones?

JUROR CAROLYN WRIGHT: Excuse me.

THE COURT: Yes, ma'am.

JUROR CAROLYN WRIGHT: I know Kittery.

THE COURT: And you're Number 14. Okay.

JUROR DIANE COPPER: I know him.

THE COURT: And Number 62. I'm sorry. I didn't get the hand of you two.

But would the fact that you know Kittery Jones influence any of you or affect you where you would give that testimony greater weight, credibility or would that affect you where you couldn't be fair and impartial?

Okay. Danny Joe Lott.

Okay. 14. 16. 33. 53. 44. 62. 136. 41. 57. 92. 127. And 148.

Of those of you that know Danny Lott, Danny Joe Lott, is there any one of you by the fact that you know him that would influence you or affect you where you could not be a fair and impartial juror? Or would any of you give his testimony greater weight or credibility strictly because you know him and would not possibly know some other witnesses?

Ray Charles Weems.

14. 33. 16. 53. And 65. 62. 136. 41. 128. And 127. And 41.

Of those of you that know Ray Charles Weems, is [935] there any one of you that would – the fact that you know Ray Charles Weems that would influence you or affect you in being a fair and impartial juror or influence you in any way or affect you where you would give his testimony greater weight or credibility than somebody that you did not know?

Okay. Denise Kendle. K-e-n-d-l-e.

14. 16. 17. 53.

Of those of you that know Denise Kendle, is there any one of you that would give that testimony greater weight or credibility than somebody that you did not know or would you tend to believe that testimony? Or would that in any way influence you in being fair and impartial?

Okay. Erving Bays. Erving Bays.

* * *

[955] And now I will tender the panel and allow the State of Mississippi to begin asking questions.

Mr. Evans, you may proceed.

BY MR. EVANS: Thank you, Your Honor. Good morning, ladies and gentlemen.

BY JURORS: Good morning.

BY MR. EVANS:

Q There are a few things that I want to go through that the judge didn't, and a few things that I want to go just a little further into that he did.

Before we do that, I am Doug Evans, your district attorney. I think some of y'all know me and some may not. Clyde Hill, one of the assistants, will be helping me; and Mike Howie, another assistant, will be helping in the trial.

Now, voir dire is strictly just an attempt to find out a little something about the jurors so that we can make sure that we get a fair and impartial jury, because the jury that sits on this case needs to listen to only the

evidence and the witnesses that come forward in court. You need to able to disregard anything else that you may know or you may heard – have heard. Anything outside the courtroom needs to be dropped at the door, and you need to come in here with an open mind.

* * *

[958] I know there were some of you the other day that were talking about not being able to judge. And at this point, we're not getting into what the penalty is. But is there anyone still out here that just feels like that they could not judge someone?

And basically, what we would get to – if we were to have a situation if that were true – that we would have a juror or jurors that would have the feeling. Well, I just don't think it's right for me to judge someone, and we would go through a week of trial and then that juror in the jury room throw up their hands and say, I'm sorry, I just don't think it's right for me to judge. So we wouldn't be able to complete what we're here for. So is there anyone here that even thinks that they could not judge someone?

* * *

[960] Okay. Yes, ma'am. What is your number, please?

A 45. **(Juror No. 45, Edith Burnside)**

Q No. 45? Okay. Ms. Burnside. And you also feel that you could not judge anyone?

A I can't. I don't feel like I can.

Q You just could not judge anyone; it wouldn't matter what the case was?

A No, sir.

Q Okay. No. 128, Mr. Moore?

* * *

[964] **Q** How many of you had ever shopped at Tardy Furniture?

(JURORS RAISE HANDS)

BY MR. EVANS:

Q Okay. Pretty good many. How many of you had accounts with the store, charge accounts?

14. I'm sorry. 75. And wasn't there one more? 45. And 62. All right. Of the ones of you that had accounts there – and I know – I hate to even ask some of these questions, but it is things we need to know. Did Tardy Furniture ever have to sue any of you for those accounts? Nobody? No. 45.

A Sir, can I say something on that? **(Juror No. 45, Edith Burnside)**

Q Ma'am?

A Can I say something on that as to why I was –

[965] **Q** Well, the question was just were you ever sued.

A Okay.

Q Not going to get into what was owed or anything else.

A Or whether it was paid off or anything?

(Juror No. 14, [966] Carolyn Wright)

BY MR. CARTER: I object, Your Honor. She ought to be able to ask her question or whatever she has.

BY MR. EVANS: If it's in response to the question.

BY THE COURT: If you'll stand up, ma'am, because the court reporter's – see, she's typing everything that's spoken and she can hear you better if you stand up.

A I had an account there, but I was not sued by Ms. Bertha. It was later on when it was took over by Mr. Frank and Roxanne. **(Juror No. 45, Edith Burnside)**

Q I think I've got where it was sued by Tardy Furniture; is that correct?

A (Nodding head).

Q And that was the question: Were you ever sued by Tardy Furniture? All right.

And No. 14, Ms. Wright. I believe you were, in fact, sued by Tardy Furniture. Is that correct?

A Yes. But it was paid off. **(Juror No. 14, Carolyn Wright)**

BY THE COURT: Would you speak up? I could not hear that.

A Yes, sir.

BY MR. EVANS:

Q You were sued, and there was a judgment against you?

A Yes, sir.

Q And none of this is meant to embarrass anybody. It's just questions that we need to ask.

All right. I want to go back through a little bit about the ones of you that may have not answered or that we didn't develop enough on the relationships with the Defendant, Curtis Flowers, and his family. I know a lot of you the other day – a lot of the ones that were here did answer. There were a lot of relatives of his. Most of those are not here now because they said that they could not be fair and impartial.

Is there anyone else here as far as being related to him or his family – and just for – briefly, to make sure that everybody understands, his father is Archie Flowers. His mother is Lola Campbell Flowers. He has one brother, Archie Flowers, Jr. One sister, Angela Jones. Another sister, Felicia – I think it's Tyson. Another sister, Prisilla Ward. And then another sister, Sherita Baskin. I think that there's been testimony already that they are related to Mr. Nelson Forrest, [967] Ms. Hazel Jones and Johnnie Mae Woods.

Now, knowing that, is there anyone still here that is related to any of those individuals?

Yes, ma'am. No. 53. And who are you related to?

A Angela is my niece. **(Juror No. 53, Flancie Jones)**

Q Who is your niece?

A Angela. And one you named is my sister-in-law. Who did you say his aunt was?

Q Ms. Hazel Jones –

A Hazel Jones is my sister-in-law.

Q Hazel Jones is your sister-in-law?

A She's a Ward.

BY THE COURT: Ms. Jones, I couldn't hear all – you had said something about somebody named. Angela? And I did not get –

BY JUROR: Angela is my niece.

BY THE COURT: What's Angela's last name now?

BY JUROR: She was a Ward, but she married a Jones.

BY THE COURT: Okay. That's the defendant's sister?

BY JUROR: I didn't know that was his sister.

BY THE COURT: Okay. And that's your niece?

BY JUROR: It's my nephew's wife.

[968] **BY THE COURT:** Okay. And then who was – is that the only one – I wasn't clear. Is that the only one whose name you recognized that he called?

BY JUROR: (Nodding head.)

BY MR. EVANS: She stated a Hazel Jones also, which is a sister to, I think, Ms. Lola Flowers.

BY THE COURT: Okay. And what was your connection with Ms. Hazel Jones?

BY JUROR: She's my – she's my husband's brother's wife. **(Juror No. 53, Flancie Jones)**

BY THE COURT: Okay.

BY MR. EVANS:

Q How often do you see these?

A I don't.

Q You don't see them?

A (Shaking head).

Q Is there anything about those relationships that would make it difficult for you to be fair and impartial?

A No.

Q And I think you also said that you knew – in addition to Angela, you knew Archie, Sr., Nelson Forrest, Hazel Jones, Danny Joe Lott. Is there anything about that that would affect you this case?

A No.

Q Okay. Thank you, ma'am.

* * *

[970] **Q** The information we have is that the Defendant and his family and Connie Moore have lived in the areas around Silver Street, McNutt, Harper and Cade. Have any of y'all ever lived in any of those areas? No. 62? Yes, ma'am.

A Where –

BY THE COURT: If you'll please stand when [971] you're responding.

A I live on – used to live on Harper. **(Juror No. 62, Diane Copper)**

Q On which street?

A Harper.

Q Okay.

BY THE COURT: And what street is that again?

A Harper.

BY THE COURT: Harper. Okay.

A Yes, sir.

BY MR. EVANS:

Q How far away from the Flowers did you live?

A Not very far.

Q Just a few houses?

A No. Probably about two blocks or so.

Q About two blocks. Would you see them very often?

A Not too often.

Q Is there anything about being a neighbor of theirs that would affect you in this particular case?

BY MR. CARTER: Your Honor, I object. I don't think that makes her a neighbor.

BY MR. EVANS: I think anybody could understand that. You may answer.

A Of course, I don't live on that street.

Q But what I'm asking is there anything [972] about the fact that you were a neighbor of theirs that would affect you in this case?

BY MR. CARTER: Same objection.

BY THE COURT: Well, I think she can classify neighbor however – you know, the State may classify somebody two blocks away as a neighbor. Then out in the country, you might consider somebody two miles away to be your neighbor. So, you know – but she can answer, I think, based on the question.

A No. No it wouldn't be a problem.

BY THE COURT REPORTER: I'm sorry. Speak up.

A No. It wouldn't be a problem.

BY MR. EVANS:

Q It wouldn't be a problem?

A No.

Q Do you still see the Flowers?

A Sometimes. I work at Wal-Mart, so sometimes they come in there and – you know, shopping.

Q You work with Archie at Wal-Mart; is that correct?

A Yes, sir. **(Juror No. 62, Diane Copper)**

Q And you also work with one of the defendant's sisters?

A That's correct.

Q Which sister do you work with?

A Cora Flowers.

[973] **Q** Cora?

A Yes, sir.

Q How long did you work with Cora?

A I can't remember the exact – probably about a year or something like that.

Q Okay. Were y'all pretty close?

A It was more like a working relationship, you know.

Q Did you ever visit with each other?

A No, sir.

Q Okay. But you did work with two of his family members, and you lived within a couple of blocks of the Flowers' residence. You do not think that any of that would affect you?

A I don't think so.

Q But I need you to – like the judge said, we need you to be positive. Could that affect your thinking in the case?

A It could.

Q Okay. Do you think that that may cause you to lean toward the defendant in the case?

A Yes, sir, it's possible.

Q Okay. Thank you, ma'am.

A Can I mention something else?

Q Yes, ma'am.

A My husband used to work down there at Tardy, too, but it was – I don't remember what year, but it was right before the incident happened.

What's your husband's name?

[974] **A** John Copper.

Q Okay.

A He just helped deliver.

Q Okay. Do you know about how long before?

A How long?

Q How long he worked there before the murders?

A No.

Q Would it have been –

A Probably – maybe late '80s or '90s, early –

Q Okay. So it had been several years before; is that right?

A Yes, sir.

Q But he did work for Mr. and Mrs. Tardy?

A Yes, sir. **(Juror No. 62, Diane Copper)**

Q All right. Thank you, ma'am.

And No. 45. Yes, ma'am?

A I live on the – around on the next street, from McNutt Street. **(Juror No. 45, Edith Burnside)**

Q Okay. Which street was that? Which direction?

A I been trying to think. It's been a long time. I cannot remember. It was the project, and I stayed over

on the next street. McNutt was behind me. I was in the front.

Q All right. When was that?

A It's been '96 when this happened? Right?

[975] **Q** Right.

A Okay. I was living there in '96.

Q Okay.

A On the next street.

Q Did you know Connie Moore?

A Just – I know her – we went to the same beauty shop and stuff like that, but I never visit her house or nothing like that.

Q All right. And you did know the Defendant. I think you said that the Defendant visited in your home?

A Yes. Him and one of his sisters have, yes. **(Juror No. 45, Edith Burnside)**

Q Okay. Which sister was that?

A Prisilla Flowers.

Q So not only did they visit in your home, but you said that he was real close with both of your sons?

A They played ball and stuff together.

Q All right. And would that affect you? Would you think about that if you were picked as a juror? If

you listened to the evidence and was asked to decide his guilt or innocence, would the fact that he's been to your home and he's close to your family and his sister, too, would that affect you?

A No, sir.

Q Okay. Thank you, ma'am.

* * *

[985] which sister do you work with?

A I works with Prisilla Ward.

Q All right. And are y'all friends?

A Yes. **(Juror No. 6, Glenn Trotter)**

Q Okay. But you're basically friends with the entire family?

A Right. I know just about all – you know.

Q And I think from my notes back in 2007, you said you were very close friends and you could not be fair and impartial because of that?

A Right.

Q Is that still true?

A Yes.

Q All right. Thank you, sir.

No. 5, Ms. Griffin. I know you pretty well know everybody around that's involved in it. Is that strictly because of just being a teacher?

A Yes.

Q Is there anything – **(Juror No. 5, Carol Griffin)**

A And church.

Q Teacher and church. Is there anything, other than that, that would affect you in this case about knowing him and any of the defendant's family?

A Other – nothing other than what I said a while ago.

Q Okay. And I've got that down. You don't feel like on this particular case you could be fair and impartial?

* * *

[986] No. 8, Mr. Robinson. I think the only family member that you said you knew was Archie Jr; was that right?

A Right. **(Juror No. 8, Alexander Robinson)**

Q How do you know him?

A I was – go to Auto Zone.

Q To Auto Zone? Okay. So it's just a working relationship, know where he works?

A Right.

Q Is there anything about that that would affect you?

A No, sir.

Q And you could base your decision strictly on the evidence?

A Right.

Q Thank you, sir. Okay. No. 17, Ms. Chesteen?

A Yes, sir. **(Juror No. 17, Pamela Chesteen)**

Q You have stated that you knew Mr. and Ms. Flowers and I think Nelson Forrest. Is there anything about those relationships that would affect you in this particular case?

A No. I've waited on them all at the bank as my customers. Most of the Flowers' family.

[987] **Q** So it's just strictly – like Mr. Robinson, just a working relationship?

A Yeah.

Q All right. Thank you, ma'am.

Okay. No. 44, Ms. Cunningham. You work with Sherita at ADP; is that right?

A Yes. **(Juror No. 44 Tashia Cunningham)**

Q And I – as a matter of fact, I think y'all work side by side there, don't you?

A No, sir.

Q You work the same line?

A We work the same line, but she did –

BY THE COURT: Who did you say, Mr. Evans?

BY MR. EVANS: Sherita.

BY THE COURT: Sherita.

BY MR. EVANS:

Q But you see her every day at work?

A Sometime, not all the time.

Q How would you not see her?

A She works at the front of the line, and I work at the end of the line.

Q Okay. And y'all are friends, aren't you?

A No.

Q You're not friends?

A Just a working relationship.

Q Okay. How long have you worked with her?

A I've been there five years.

Q How long has she been there?

A I have no idea.

[988] **Q** Was she there when you got there?

A She was there on – when I came, she was on third shift when I started.

Q How long have y'all been working the same shift?

A Probably about two or three years.

Q Okay. And let's see. I believe you stated that you knew Mr. Nelson Forrest and Reverend Lewis?

A Yes.

Q Is there anything about those relationships that would affect you?

A No.

Q All right. As far as Sherita, if you were picked as a juror on this case, do you feel that if you found from the evidence that he was guilty and voted guilty that you would owe her any explanation?

A No.

Q Okay. You don't feel that that would affect you at all?

A No.

Q All right. Thank you, ma'am.

No. 50, Mr. Lester. And I think – I'm going to make sure I got my notes right. You said that the knowledge you had of the different people involved was from a working relationship, too; was that correct?

A The ones involved, are you talking about – **(Juror No. 50, Bobby Lester)**

[989] **Q** Well, the possible witnesses?

A Yes.

Q Like –

A Yes.

Q Okay. Ms. Jones, Nelson Forrest?

A Yes.

Q Reverend Lewis?

A Yes. I work at the bank where Pam does, and we see everyone in town.

Q Yes, sir. That's your only knowledge of these people. Nothing about knowing who they are that would affect you in this case?

A No, sir.

Q All right. Thank you, sir.

No. 53, Ms. Flancie Jones. All right. You've stated that – let me just ask you again: What is the relationship? How are you related to the defendant?

A To him? **(Juror No. 53, Flancie Jones)**

Q Right.

A The last time I was here, the Court told me that he was my sister-in-law's sister's son. I didn't even know that.

All right. But you are related to him?

A I – some – I'm – by marriage.

Q All right. And I may have not gotten them all because I think I ran out of room here. You said that you knew Angela Flowers?

A Angela is married to my nephew.

[990] **Q** Okay. And what's your nephew's name?

A Mark Jones.

Q Mark Jones?

A (Nodding head). If we're talking about the right Angela.

Q Okay. And you know Archie –

BY MR. CARTER: Your Honor, can we clarify which Angela for the record?

BY THE COURT: Well, I don't know if we can or not. I mean, she said –

BY MR. EVANS:

Q You know who Angela Flowers is, don't you?

A Is it Angela Ward? She was a Ward before she married? **(Juror No. 53, Flancie Jones)**

Q (Nodding head).

A Uh-huh.

Q Okay. And you also know Archie, Sr; is that correct?

A No.

Q I may have written that down wrong. You know Connie Moore?

A I've heard people talk of her because I'm really not from Winona here. I'm from Duck Hill, and I went to Kilmichael schools. So a lot of people here, I do not know.

Q But I think yesterday you said you did know her?

A I think I might. Because I hear people saying that she going to get married, you know, at [991] the places I work? As far as knowing her, I don't really know her. I just know her when I see her.

Q Nelson Forrest?

A I went to school with a lot of Forrests. I don't know which one it was.

Q Hazel Jones?

A Hazel is my sister-in-law.

Q Okay. All right. And Hazel Jones, I believe, is the Defendant's aunt. So you're connected with him in several ways; is that right?

A I guess. **(Juror No. 53, Flancie Jones)**

Q Now, knowing that, knowing that you are related to him and these different connections, would that affect you? Would you think about that –

A It wouldn't affect me, because I have no relationship with any of them.

BY MR. EVANS: All right. Thank you, ma'am.

BY THE BAILIFF: Mr. Evans, we've got – we need a jury break, if possible, please.

BY MR. EVANS: Okay. Is that all right, Your Honor?

BY THE COURT: Ladies and gentlemen, we'll recess for ten minutes.

* * *

[1002] **BY MR. EVANS:** Your Honor, may I have the Court's indulgence for just a minute?

(PAUSE)

BY MR. EVANS: I tender the panel to the Defense.

* * *

[1027] No. 45. Ma'am, like the others, I understand that you're uncomfortable sitting in judgment of other people. And again, a lot of us are that way, if not all. You don't have anything against the Goldens, the Rigbys, the Tardys or the Stewarts, do you?

A No, sir. **(Juror No. 45, Edith Burnside)**

Q Or any of their relatives?

A No, sir.

Q And you don't have anything against Mr. Flowers, do you?

A No, sir.

Q And I believe you said you know some of his family members?

A Yes, sir.

Q However, if you got picked as a juror for this case – and only you know the answer to this – and you were told you should make your decisions – your verdict should be based on the evidence that comes from the witness stand and not on anything you [1028] heard outside the court or not based on any relationships you had with anybody else, could you, in fact, listen to the evidence as it comes from the witness stand and make your decision based on the evidence as it comes from the witness stand only?

A Yes, sir. **(Juror No. 45, Edith Burnside)**

Q Thank you.

No. 14. Now, do you have anything against the Tardy family or her daughter or other children?

A No, sir. **(Juror No. 14, Carolyn Wright)**

Q And you don't have anything against the Rigbys, the Goldens, or the Stewarts, do you?

A No, sir.

Q And despite the fact that you had an account at Tardy at some point that I assume that got worked out some kind of way, that – that didn't cause you to

have any – any dislike or any ill will toward them; is that correct?

A No, sir.

Q If you got – do you have any anything against Mr. Flowers?

A No, sir.

Q Or his family?

A No, sir.

Q So if you got picked as a juror to serve in this case, you would – could you listen to the testimony and evidence that comes from the witness stand, and the witness stand only, and make a decision as to Mr. Flowers' guilt or innocence?

[1029] **A** Yes, sir. **(Juror No. 14, Carolyn Wright)**

No. 45. You didn't say you had been sued by Tardy, did you?

A I did. **(Juror No. 45, Edith Burnside)**

Q Okay. Could you stand? Even though you got sued, did that cause you to have any ill will or malice toward Tardy Furniture or the Tardy children or family members?

A No. I worked for them, so no. No.

Q I'm sorry. You worked for them at some point, and you don't have anything against them or the Stewart or the Rigbys or anybody else?

A No, sir.

Q You could be fair to both sides?

A Yes, sir.

Q Thank you.

And No. 62. Ma'am, you had an account with the Tardys – the Tardy Furniture at some point; is that correct?

A Yes. Well, it was more like on my husband – he was the one that had got some [1030] furniture from them, so it was in his account. Well, in his name. **(Juror No. 62, Diane Copper)**

Q Your husband, you say?

A Yeah.

Q Okay. Now, you – you or your husband didn't get sued, did you?

A No, we didn't.

Q Thank you.

No. 62. Ma'am, you said – could you stand again? You said that you – now, you lived near the Flowers at some point. Well, I don't know if I want to say near, but you lived –

A Not very far from – not too far from where they lived. **(Juror No. 62, Diane Copper)**

Q All right. They didn't live next door to you, did they?

A No.

Q And your husband used to work at Tardy's?

A Yes.

Q Okay. You could be fair to both sides, is that correct, despite that?

A Yes, sir.

Q Thank you.

* * *

[1037] No. 17. Correct me if I'm wrong, Ms. Chesteen, did you say you were friends with Roxanne?

A In high school, we were friends. **(Juror No. 17, Pamela Chesteen)**

Q And I believe you said you visited in Roxanne's house?

A I did some.

Q And I believe you said you know some of the Flowers?

A (Nodding head).

Q You know the Goldens?

A (Nodding head).

[1038] **Q** And I believe you said you would try your best to be fair. Well, let me ask you this – now correct me if I'm wrong now, because I have a sense of friendship that I don't want to appropriate to you my means of friendship, so correct me if I'm wrong.

Now, I would have a hard time finding against my friend. Are you telling us that despite the fact that Roxanne is your friend and having lost her mother and other wonderful people, for all I know, in such a horrible way, that you could sit in judgment of Mr. Flowers and not let that affect you?

A I can tell you that I hurt for all the families, every one of them. Honestly.

Q I believe you.

A And I do believe I could sit and listen and have an open mind.

Q But can you tell me that friendship with Roxanne won't play any role at all, absolutely won't play a role?

A No, I can't say that. **(Juror No. 17, Pamela Chesteen)**

Q Can't say that. Thank you.

BY THE COURT: Are you saying no, you can't say –

BY JUROR: No, I'm saying no, that I don't believe it would have a role.

BY MR. CARTER:

Q I'm sorry. Could you stand up? I'm sort [1039] of confused there. You said – you're saying – or are you saying that despite – how old were you when your friendship with Roxanne started? Do you know?

A I don't know. Probably 15 or 16.

Q And that friendship is – remain the same or – what would be fair to say?

A I don't talk to Roxanne. Only when I see her somewhere, I speak to her.

Q Okay. But you still consider her your friend?

A Surely.

Q Still your friend? And your final answer was that despite the friendship, that you could sit in judgment of this case, and the friendship with Roxanne won't play any role whatsoever?

A That's right.

Q All right.

* * *

[1075] MR. CARTER: Thank you.

Bill Thornburg. Anybody relative of Jack Matthews? David Balash. Joe Edward Andrews. Elaine Gholston.

JUROR CAROLYN WRIGHT: She is not related to me, but her husband is my first cousin.

MR. CARTER: Is it fair to say that that [1076] relationship wouldn't cause you to be unfair to Mr. Flowers? Or would that relationship affect you and cause you to give her testimony more credibility and believability than you would anybody else's?

JUROR CAROLYN WRIGHT: No, sir.

IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED 1036-1186 VOLUME 31 of 47

EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM: Circuit Court

COUNTY: Montgomery

TRIAL JUDGE: Joseph H. Loper Jr.

Curtis Giovanni Flowers v. State of Mississippi

Kathy Gillis, Clerk

TRIAL COURT #: 2003-0071-CR

* * *

[1095] MRS. STEINER: Your Honor, before we commence individual voir dire.

Your Honor, I believe the individual voir dire, as understand, is going to go into both publicity and death penalty.

THE COURT: Right.

[1096] MRS. STEINER: And before we commence, I would like to renew some motions we had previously made with respect to barring, seeking or

imposition of the death penalty, which would preclude the need for that.

The first motion I would like to renew is the motion – I think it was re-renewed in April – that was filed in September of 2008 just prior to fourth trial in this matter to preclude the prosecution from seeking imposition of the death penalty in this matter largely on the basis of the documented history through – in, in the courts.

The first three trials of racial discrimination, as set forth in that motion, which was considered by the Court previously and today, the experience of the means in the areas which the State is inquiring, practicing prosecutorially as cross-examining African-American jurors, particularly the ones whom have been identified as having had civil disputes with Mrs. Tardy's business.

THE COURT: What does that have to do with the death penalty?

MRS. STEINER: And this is part and parcel –

THE COURT: What does that have to do with the death penalty?

MRS. STEINER: Yes, Your Honor. This is part and parcel of the misconduct that in the 2008 motion we had cited as a basis to preclude the death qualification, which we anticipate they will continue in the same vein.

And on that basis, we would move on grounds set forth in the 2008 motion and as carried out that there's [1097] a long discussion in that motion of ways in which discrimination has been occurring. And I think the way that the State has been handling its voir dire to date, that has continued, and that at the very least the death penalty should be precluded.

We would also renew the motion that inherently given – what's set forth in juror questionnaires, I believe that there will continue to be a racially discriminatory effect, as there was in the last four trials, in terms of reducing the proportion of African-American jurors statistically, significantly in this juror pool.

* * *

[1101] MRS. STEINER: Thank you, Your Honor. I take it you are overruling the motion again.

THE COURT: I am overruling on the idea of prosecutorial misconduct that would preclude them from seeking the death penalty, because there has been no showing that there was any prosecutorial misconduct. And again, the reason why they didn't seek the '07 death penalty then was because of an agreement between your office and them that if you didn't seek to have this expert on identification, they would not seek the death penalty. That was clear from the record back then.

Also, I don't agree with your characterization that the State has made discriminatory questions today about – during the jury selection. The State asked [1102] everybody that was on the panel if they had ever

been sued by Tardy Furniture company. That did not single out a person that was black, a person that was white.

They first asked if there was people that had charge accounts there. There were a number of white people and black that said they did. And then they asked if anybody had ever been sued. You know, I think it was two or three black jurors that said they had been. But that was not anything that was suggestively racist or racial in any way. So I do not see that their questioning today has had anything dealing with race.

This case is not about black and white. It is right or wrong and guilt or innocence is what this case is about. And as I say, up to this point, I have not seen any issue that would indicate that there is anything discriminatory about any question that they have asked.

Also, the case law at this point in this state is clear that, you know, you can exclude people under *Witherspoon* if they say they cannot consider under any circumstance the death penalty. If it disproportionally results in one group of people being excluded because of that, that is the law. And I'm sworn to uphold the laws of the State of Mississippi, and I do my dead level best to follow the precedents that have been set by the Supreme Court of Mississippi and the Supreme Court of the United States. And based on that, I do not see any merit to your motion. So it is denied.

* * *

IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED 1036-1186 VOLUME 31 of 47

EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM: Circuit Court

COUNTY: Montgomery

TRIAL JUDGE: Joseph H. Loper Jr.

::::::

And I first want to know if you have any knowledge about this case, heard anything about the facts of the case or, you know, discussed it or heard it discussed, read about it in the newspaper, seen it on t.v., newspapers, Internet or anywhere else.

JUROR CAROLYN WRIGHT: Yes. Yeah.

THE COURT: And can you tell us how you heard about the case?

JUROR CAROLYN WRIGHT: T.V. Newspaper.

THE COURT: Can you speak –

JUROR CAROLYN WRIGHT: T.V. Newspaper.

THE COURT: And can you recall anything you might have specifically read about the case or anything?

JUROR CAROLYN WRIGHT: About the murders that was taken place at Tardy Furniture company in Winona.

THE COURT: And is there anything about what you have seen, heard or read that would have caused you to foci any opinions as to the guilt or the innocence of Mr. Flowers?

JUROR CAROLYN WRIGHT: No, sir.

THE COURT: And would you lay aside anything that you did hear, read or see and base your

decision only on the evidence that is presented here in open court?

JUROR CAROLYN WRIGHT: Yes, sir.

THE COURT: And the next issue, Miss Wright, is if the jury after the first – what happens in this type [1163] case is there is two phases of a trial, possibly two.

First, you decide the guilt or innocence of Mr. Flowers. If he is found not guilty, we do not go into a second phase. But if he were to be found guilty, then we would go to a second phase and that would decide the appropriate punishment that the jury felt he should receive.

The State of Mississippi will be seeking the death penalty. They will be putting on aggravating facts that would show the jury why they think he should receive the death penalty. The defense would put on mitigation witnesses. That would be witnesses to show why or proof that would show why they think he should not receive the death penalty.

The jury then would make that determination. If the jury did not return a penalty – death penalty, then the sentence would be life without parole. So I want to know, first of all, could you consider the death penalty as a sentencing option if you were deliberating at the second phase of the trial?

JUROR CAROLYN WRIGHT: Yes, sir.

THE COURT: And so you could consider that.

JUROR CAROLYN WRIGHT: Yes, sir.

THE COURT: That does not mean you are committing to do it. It is just something that you would leave open the possibility of that sentence.

JUROR CAROLYN WRIGHT: Yes, sir.

THE COURT: Would you also consider the life without parole?

[1164] JUROR CAROLYN WRIGHT: Yes, sir.

THE COURT: And so when you were deliberating on the sentence, you would consider the fact that he would get life without parole if he didn't get the death penalty.

JUROR CAROLYN WRIGHT: Yes, sir.

THE COURT: So you would leave both sentencing options open and available; is that correct?

JUROR CAROLYN WRIGHT: Yes, sir. Yes, sir.

THE COURT: Okay. Thank you.

MR. EVANS: Are you through, Your Honor?

THE COURT: I am.

MR. EVANS: Miss Wright, I know we have gone over some of this before, but are you telling us the

fact that you worked with his father at Wal-Mart, you're cousins with the witness Weems and that you knew that long line of witnesses that I read out earlier.

JUROR CAROLYN WRIGHT: Yes, sir.

MR. EVANS: None of that would affect your decision at all.

JUROR CAROLYN WRIGHT: No, sir. No, sir.

MR. EVANS: Okay. And as far as the death penalty, are you telling us that if the law authorized it and the facts justified it you, yourself, could vote for the death penalty?

JUROR CAROLYN WRIGHT: Yes, sir, I would.

MR. EVANS: Nothing further, Your Honor.

MR. CARTER: Miss Wright, I simply want to know if you know what these terms mean, aggravation and [1165] mitigation. Do you have any confusion about those?

JUROR CAROLYN WRIGHT: No, sir.

MR. CARTER: Okay. So you are saying that any evidence we put on about Mr. Flowers' background, his character, the nature of the crime, you would consider all of that in making your decision. You wouldn't have any problem with rejecting that or deeming his history before this crime to be insignificant or it doesn't matter.

JUROR CAROLYN WRIGHT: No, sir, I wouldn't.

MR. CARTER: You would consider everything.

JUROR CAROLYN WRIGHT: Yes, sir.

MR. CARTER: Thank you.

THE COURT: Miss Wright, you may step down. And there may be the temptation of some of your other jurors to say oh, what did they ask you or something. Don't talk about what you have discussed in here when you go back out with your fellow jurors, please.

JUROR CAROLYN WRIGHT: Okay. Okay.

THE COURT: If you will get Number 17.

* * *

IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED 1187-1337 VOLUME 32 of 47

EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM: Circuit Court

COUNTY: Montgomery

TRIAL JUDGE: Joseph H. Loper Jr.

Curtis Giovanni Flowers v. State of Mississippi

Kathy Gillis, Clerk

TRIAL COURT #: 2003-0071-CR

* * *

[1165] (JUROR NUMBER 17, PAMELA CHESTEEN, ENTERED THE COURTROOM.)

And Miss Chesteen, if you will, come forward and have a seat down here.

(THE JUROR WAS SEATED ON THE WITNESS STAND.)

We are asking a couple of questions of each juror individually now, and I want to know – and I take it from you saying you've lived here for a while, worked

at Bank of Winona, you have probably heard about this case.

[1166] JUROR PAMELA CHESTEEN: Oh, yes, sir.

THE COURT: And can you tell us how you might have heard about the case, like through newspaper, radio, television, just talk in town?

JUROR PAMELA CHESTEEN: Well, yeah, I mean I remember the day it happened. I was working at the bank, and I just – I guess somebody probably called us and told us. I have seen it in the paper and on the radio. Heard people talking about it.

THE COURT: So probably about every way a person could communicate with another, you probably at some point heard, you know, through, t.v., radio or newspaper.

JUROR PAMELA CHESTEEN: Yes, sir.

THE COURT: How about internet?

JUROR PAMELA CHESTEEN: I have.

THE COURT: And has anything that you read caused you to form any opinions about the guilt or innocence of Mr. Flowers?

JUROR PAMELA CHESTEEN: No. Well, let me think. I have just read or heard the things that – you know, the things that they said they had for evidence or some of them.

THE COURT: Well, do you understand just because – and I'm not meaning to be disrespectful of anybody that is in the media here today. But sometimes what you read or hear might not be right.

JUROR PAMELA CHESTEEN: I do understand.

THE COURT: And I think the media tries to do a [1167] good job, but sometimes they don't get things exactly right. And so if you read something in the newspaper at some point in the past, but that proof did not come forward during the trial, would you be thinking of things you read or heard in the past, or would you base your decision only on the evidence that is presented in court?

JUROR PAMELA CHESTEEN: Honestly, I probably would not remember what I had read, just to be totally honest.

THE COURT: Well, so are you saying then that you could and would lay aside anything that you might have read and base your decision only on – or heard and base your decision only on the evidence presented here and on nothing else?

JUROR PAMELA CHESTEEN: Yes. Yes.

THE COURT: The next question, the way a capital murder trial works is first a jury decides guilt or innocence. If the jury found Mr. Flowers not guilty, we would not even get to the second phase of a trial. But if the jury found him guilty, then we would get to a second phase, which is called a sentencing phase. At

that time the jury would decide whether the death penalty should be imposed. During that sentencing phase, the State of Mississippi would put on proof that they think would justify the imposition of the death penalty. That would be called aggravating circumstances. Mr. Flowers would put on proof of why he believes the death penalty would not be appropriate. That is called mitigating circumstances.

[1168] And at the conclusion of that proof the jury would decide whether the death penalty should be imposed. If the jury felt that the death penalty should not be imposed, then he would receive an automatic sentence of life in prison without parole.

So I want to know first, could you consider the death penalty as a sentencing option if – in the case?

JUROR PAMELA CHESTEEN: Yes.

THE COURT: And if the facts justified it and the law allowed it, could you impose the death penalty?

JUROR PAMELA CHESTEEN: Yes.

THE COURT: And if you felt that the facts did not justify the death penalty, could you consider life in prison without parole as an option?

JUROR PAMELA CHESTEEN: If there was not evidence to prove –

THE COURT: If you felt like the facts did not justify the death penalty, could you then consider life in prison without parole?

JUROR PAMELA CHESTEEN: Yes.

THE COURT: So you would leave both sentencing options open and would make your decision based on the evidence as presented; is that correct?

JUROR PAMELA CHESTEEN: Yes, sir.

THE COURT: And again, do you understand we would not even get to the sentencing phase unless he was found guilty in the first phase?

JUROR PAMELA CHESTEEN: Right.

THE COURT: Okay. Thank you.

[1169] MR. EVANS: I just want to go into one area that I don't think the judge went as far as I would like to cover. Excuse me.

You understand that in the first phase, the jury should not even consider which sentence would be appropriate, that you would only get to that once we got to the second phase.

JUROR PAMELA CHESTEEN: Right. Yes, sir.

MR. EVANS: Excuse me.

That's all, Your Honor.

MRS. STEINER: Miss Chesteen, good afternoon.

I have to say you hesitated just a moment when His Honor was asking you about whether or not all this

information you had received, including being here the day it happened and hearing about it, like as it was going – right after it happened, you hesitated, I thought, a little bit when the judge asked you about an opinion and whether you had an opinion.

JUROR PAMELA CHESTEEN: Well, I think it's like you all said earlier. We have – a lot us have formed an opinion.

MRS. STEINER: All right. And are you one of those people?

JUROR PAMELA CHESTEEN: Yes. At once I did.

MRS. STEINER: All right. And I think you have been very forthright. You have answered a lot of questions when the other people were in the room also. And you, you were saying things, I think, I want to be fair. I hope I can be fair. Has – you know, now you [1170] are here in private. You have had some chance to think. Have – do you think you can completely set aside that opinion, or would that opinion walk into the jury room with you no matter how hard you tried?

JUROR PAMELA CHESTEEN: No. I would have to be totally honest with – whatever I heard I would have to do, go by that or I wouldn't be able to live with myself.

MRS. STEINER: I understand that.

THE COURT: You talking about heard in the courtroom?

JUROR PAMELA CHESTEEN: Right.

MRS. STEINER: Now, on – I believe you said you were actually friends with Miss Ballard.

JUROR PAMELA CHESTEEN: In high school we were.

MRS. STEINER: In high school. And have you had any contact with her since her mother died in 1996?

JUROR PAMELA CHESTEEN: Only running into her at a restaurant or something at the school.

MRS. STEINER: All right. And have you ever discussed this case with her, what happened to her mother?

JUROR PAMELA CHESTEEN: Never discussed the case. I possibly may have seen her at some point and told her I was sorry about her mother, but that would be the extent of it. We have not ever discussed it.

MRS. STEINER: And I guess, you know, just because you have an opinion, you think you can set it aside. Let me turn to, if you, the next time she walks into your bank, if you have found honestly that the [1171] evidence does not support the entry of a guilty verdict, is that going to be a problem for you?

JUROR PAMELA CHESTEEN: Huh-huh.

MRS. STEINER: All right. You could face her.

JUROR PAMELA CHESTEEN: Yeah, I could face her.

MRS. STEINER: And now you – the judge used words aggravation and mitigation. Aggravation being what the State proves that it thinks justify the death penalty, beyond find Mr. Flowers guilty beyond a reasonable doubt. What do you understand mitigation to be from what the judge told you?

MR. EVANS: Your Honor, I don't think that is appropriate. The Court will instruct the jury what mitigation is.

THE COURT: I agree. And I did tell her already what mitigation was. That is the reason the jury might find the death penalty not appropriate. So you are again getting into issues I have already covered. So if you will move on to things I have not covered.

MRS. STEINER: All right.

Do you understand that the aggravation, aggravating circumstances, the State has to prove those beyond a reasonable doubt and you, as a juror, have to vote with all 12 of your other colleagues beyond a reasonable doubt to find those aggravating circumstances?

JUROR PAMELA CHESTEEN: Yes, ma'am.

MRS. STEINER: His Honor is going to instruct you that for mitigation, you do not have to agree

with everybody about any particular kind of mitigation or [1172] whether it exists or how much it weighs. You understand that.

JUROR PAMELA CHESTEEN: Um-hum.

MRS. STEINER: And you said you, you can close yourself off from your opinion. Can you stand and just make decisions on mitigation even if all 11 other people disagree with you on a point and you think it is mitigating? Can you do that?

JUROR PAMELA CHESTEEN: I will surely try. I mean I, I will just know what I hear.

MRS. STEINER: Well, you said the evidence. Does, does Mr. Flowers have the burden, in your mind, to prove he is not – he shouldn't get the death penalty beyond a reasonable doubt?

JUROR PAMELA CHESTEEN: No.

MRS. STEINER: All right. You could be open to anything, anything that he chose to put on about why he –

MR. EVANS: Your Honor, I think she is asking a question that this juror can't answer, because she doesn't know what the Court is going to allow at this point.

THE COURT: I, I think I covered everything when I was questioning her, when I asked her would she consider the aggravating and mitigating circumstances and would she consider both sentencing options.

MRS. STEINER: Your Honor, I'm trying to make sure she understands what mitigation is and that she can fully – that she is not mistaken about what has to be [1173] proven about mitigation in light of her statement.

THE COURT: Well, I asked her if the facts justified it and the law allowed it. And the law will be explained to her in jury instructions, if she were to be selected.

MRS. STEINER: Miss Chesteen, having heard that from the judge, can you give fair consideration to any piece of – as fair consideration to any piece of evidence the defense puts on in mitigation of the case, as you can to any piece of evidence the State puts on in aggravation?

JUROR PAMELA CHESTEEN: As long as I can see that any of it is the truth or could possibly be true. Yes.

MRS. STEINER: And that's at sentencing. If it's at the – you say if anything could possibly be true. If in the guilt phase – you say you read a lot about it and heard a lot about it and know a lot about it. Are you going to hold the State to the burden of beyond a reasonable doubt, or are you going to hold them to the could possibly be true standard?

JUROR PAMELA CHESTEEN: It's beyond a reasonable doubt; r ght? Is that – that is what it is supposed to be.

MRS. STEINER: I think His Honor and the State have both told you at the guilt phase –

JUROR PAMELA CHESTEEN: Um-hum.

MRS. STEINER: – it is beyond a reasonable doubt.

[1174] JUROR PAMELA CHESTEEN: (NODDED.)

MRS. STEINER: But what role does could possibly be true have there in your mind, especially in light of all the information you have heard from outside that you are going to try to leave outside this door?

JUROR PAMELA CHESTEEN: I'm not sure I understand what you want me to answer.

MRS. STEINER: You said you would listen to any evidence that you thought could possibly be true.

JUROR PAMELA CHESTEEN: No, I will listen to all of it.

MRS. STEINER: All right. But you would act on any evidence you thought could possibly be true.

JUROR PAMELA CHESTEEN: As long as it seemed to be the truth, yeah.

MRS. STEINER: That would be at both phases.

MR. EVANS: Your Honor, we are talking – I want to make sure the record is clear. She has asked

her about aggravators and mitigatory, and she said she could consider either one of them as long as she believed they were true. And I think that is appropriate.

MRS. STEINER: If the Court please, I didn't want to confuse the juror. I was now moving back to the guilt phase and beyond a reasonable doubt and exploring whether she had understood the Court's question.

I have nothing further from her at this point.

THE COURT: Well, let me just clear things up.

Miss Chesteen, in the guilt phase, you would listen to the evidence, and you decide the facts of the case. [1175] If there was a dispute among the evidence as to what the true facts are, you determine those facts based on your view of the evidence.

JUROR PAMELA CHESTEEN: Yes, sir.

THE COURT: Do you understand that?

JUROR PAMELA CHESTEEN: Yes, sir.

THE COURT: And you also base your decision as to guilt or innocence on your view of the evidence. But you could only return a verdict of guilty if the State proved Mr. Flowers beyond a reasonable doubt to be guilty. Do you understand that?

JUROR PAMELA CHESTEEN: Yes, sir.

THE COURT: If the State does not meet that burden of proof, would you find Mr. Flowers not guilty?

JUROR PAMELA CHESTEEN: Yes.

THE COURT: And then again, on the sentencing phase, during the sentencing phase if you felt like the facts did not justify or the law did not allow imposition of the death penalty, would you agree with life without parole?

JUROR PAMELA CHESTEEN: Yes.

THE COURT: And if he – if you felt the facts did justify it and the law did allow it, could you bring in a death penalty sentence if you felt that appropriate?

JUROR PAMELA CHESTEEN: Yes, sir.

THE COURT: Thank you.

If you please would, don't discuss any of your testimony in here with anybody outside.

JUROR PAMELA CHESTEEN: Okay.

* * *

IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED 1187-1337 VOLUME 32 of 47

EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM: Circuit Court

COUNTY: Montgomery

TRIAL JUDGE: Joseph H. Loper Jr.

Curtis Giovanni Flowers v. State of Mississippi

Kathy Gillis, Clerk

TRIAL COURT #: 2003-0071-CR

* * *

[1201] (JUROR NUMBER 29, HAROLD WALLER, ENTERED THE COURTROOM.)

If you will, come down here, Mr. Waller, and have a [1202] seat.

(THE JUROR WAS SEATED ON THE WITNESS STAND.)

MR. EVANS: Your Honor, may we have one minute? I'm sorry, Your Honor.

THE COURT: Mr. Waller, we are bringing everybody in and asking them a couple of questions outside the presence of the other jurors. And one of the questions I want to ask is if you have heard anything about this case or have obtained any knowledge about the case or the investigation of the case or anything like read it in the newspaper, seeing it on t.v., read it on the internet or radio or any – hearing it on the radio or any facts about the case.

JUROR HAROLD WALLER: I just read what is in the local paper, you know, radio. I haven't talked about it.

THE COURT: Sir.

JUROR HAROLD WALLER: I haven't discussed it, the case with anybody.

THE COURT: And has anybody tried to discuss it with you at any point?

JUROR HAROLD WALLER: No, sir.

THE COURT: And has anything that you saw or read or heard caused you to form an opinion as to the guilt or innocence of Mr. Flowers?

JUROR HAROLD WALLER: No, sir.

THE COURT: And would you lay aside anything that you heard outside the courtroom and base your decision strictly on the evidence that is presented here [1203] in court?

JUROR HAROLD WALLER: Yes, sir.

THE COURT: And the next question revolves around the sentencing phase of the case, if the trial got to that point. What happens first is, is the determination of guilt or innocence. If Mr. Flowers was found not guilty, there will not be a second phase. But if he were to be found guilty, then we would get into the sentencing phase. Are you with me so far?

JUROR HAROLD WALLER: Yes, sir.

THE COURT: If we got to the sentencing phase, the jury would decide then whether he should receive the death penalty. If the jury found he did not deserve the death penalty, life in prison would be the sentence that would be imposed.

The State of Mississippi will be putting on aggravating factors which in the State's view would justify the imposition of the death penalty. Mr. Flowers, if it got to the second phase, would be putting on proof that in his view would mitigate, would be reasons why he should not receive the death penalty. And so if it got to the second phase, could you consider the death penalty as a sentencing option?

JUROR HAROLD WALLER: Yes, sir.

THE COURT: And could you also consider life without parole as a sentencing option?

JUROR HAROLD WALLER: Yes, sir.

THE COURT: So as we sit here today, you would consider both options and would make your determination [1204] based on the evidence presented at

the second phase and based on the law instructed by the Court?

JUROR HAROLD WALLER: Yes, sir.

THE COURT: And that is understanding if it even got to that second phase.

JUROR HAROLD WALLER: Yes, sir.

MR. EVANS: No questions from the State.

MR. CARTER: I have a few, Your Honor.

Mr. Waller, could you ever consider a life sentence, life without possibility of parole as a adequate punishment for the capital murder of four people?

JUROR HAROLD WALLER: I could consider it, yes.

MR. CARTER: What do you mean by consider?

JUROR HAROLD WALLER: Well, I mean if that was one of the options that was going on in the court, I, I mean, yeah. If it was capital, I could go, you know, go with the death sentence too.

MR. CARTER: Okay. All right. So you said you would consider it. But could you vote for life without possibility of parole?

JUROR HAROLD WALLER: Yes.

MR. EVANS: Your Honor, he is asking for him to decide what he would vote. That is not the proper question.

MR. CARTER: I will strike that, Your Honor. I did over step. I will strike that.

Now, Mr. Waller, would the, the nature of the crime matter to you in your vote for life or death? Would you want to know what happened and how it happened, why it [1205] happened, that kind of stuff before voting for life or death?

JUROR HAROLD WALLER: Yes, sir. I mean I would have to see the evidence that was put forth.

MR. CARTER: Would you want to – would the background, the character, the life history of the defendant before they got charged with the capital murder, would that matter to you? Would you want to know that?

MR. EVANS: Again, Your Honor, he is asking him now to say what would matter. He can't –

THE COURT: I sustain. The appropriate question is to say would you consider the aggravating and mitigating factors and base your decision on what is presented. And I have already asked that of him.

MR. CARTER: Well, Your Honor, I accept that. Your Honor, I just wanted to make sure he knew what mitigation was.

THE COURT: I explained that to him.

MR. CARTER: Okay.

THE COURT: You may step down now.

* * *

IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED 1187-1337 VOLUME 32 of 47

EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM: Circuit Court

COUNTY: Montgomery

TRIAL JUDGE: Joseph H. Loper Jr.

Curtis Giovanni Flowers v. State of Mississippi

Kathy Gillis, Clerk

TRIAL COURT #: 2003-0071-CR

* * *

[1291] (JUROR NO. 44, TASHIA CUNNINGHAM, ENTERS THE COURTROOM)

BY THE COURT:

Q Ms. Cunningham, if you'll come forward, please, and have a seat down here.

Ms. Cunningham, what we're doing is were asking questions of everybody privately and individually on a couple of issues.

First, on the issue of whether you have any knowledge about this case or have heard anything about this case?

A No.

[1292] Q And did you ever even hear about the Tardy murders at all?

A I heard about it.

Q So how did you come to hear about it?

A On the news.

Q Was that T.V. or radio?

A Uh-huh,

Q T.V.?

A With a neighbor, yes, sir.

Q And have you read any papers or really kept up with the case?

A No, sir.

Q And has anything that you read or heard caused you to form an opinion as to the guilt or innocence of Mr. Flowers?

A No, sir.

Q Would you lay aside anything that you may have heard outside the courtroom and base your decision, if you're to serve as a juror on this case, only on the evidence presented here in court?

A Yes, sir.

Q And you would not let anything you've heard come into play as far as your jury deliberation?

A No, sir.

BY MS. STEINER: Your Honor, I would interpose the leading objection to the question.

BY THE COURT:

[1293] **Q** Okay. Would you let anything that came in outside the courtroom come into play?

A No, sir.

Q Also, the next issue involves the possibility of the imposition of a sentence. If it got to the point where we did have a sentencing – first, it would get to the point where Mr. Flowers would have had to be found guilty. If he's found innocent on the guilt phase, we do not even get to the second phase. But if it got to that phase, then the State of Mississippi would be seeking the death penalty. They would be putting on aggravating factors, which would show why they think the death penalty is appropriate.

Mr. Flowers would be putting on mitigating facts, which will show why he believes the death penalty would not be appropriate. You would then be instructed on the law and so what – would you or would you not be able to consider the death penalty? I mean, what's your view on even considering the death penalty?

A I would not.

BY THE COURT REPORTER: I'm sorry. What?

A I would not.

BY THE COURT:

Q Are – are you saying you would not consider it?

A No, sir.

Q Even if the law allowed it and the facts [1294] justified it, you just could not even consider it?

A No, sir.

Q Also, there's – you know, if he didn't get the death penalty, it would be a situation where life without parole would be the sentence. Would that be something that you could consider?

A Yes, sir.

Q So – but again, just tell me again what your feelings are on the death penalty.

A I don't believe in the death penalty.

Q And would there be a possible – could you consider it?

A I don't think so.

Q You don't think so?

A I don't think so.

Q But there's – in our own mind, you might could – are you saying you could possibly?

A I don't think so.

Q See, I'm not asking you to make a – you know, you haven't heard anything. And all we want to know is whether you could consider that as a possibility – that as a sentencing possibility, because you and your fellow jurors will decide the sentence, but I just want to know if you could even consider that as a possible sentence?

A I might. I might. I don't know. I might.

Q So you might be able to consider that?

A (Nodding head).

[1295] **BY THE COURT:** Okay.

BY MR. EVANS:

Q Good morning, Ms. Cunningham.

A Good morning.

Q Ms. Cunningham, do you also go by the name of Small?

A That's my married name.

Q You need to speak –

A That's my married name.

Q Your married name?

A Uh-huh.

Q All right. As far as the death penalty – and I want to make sure that I understand what you're saying – if the law authorized the death penalty in this case and you found that the facts of the case that came from the stand justified it, could you, in fact, vote for the death penalty?

A I don't think so.

BY MS. STEINER: I object. I think the question is whether she could consider it –

BY MR. EVANS: No, sir. That is the exact question, I think, that has been approved by the Supreme Court.

BY THE COURT: And what was the question again?

BY MR. EVANS: The question is: If the law authorized it and the facts justified it, could she vote for the death penalty?

BY MS. STEINER: I object. I believe it's [1296] could she consider –

BY THE COURT: I think it should be could she consider voting for it. I don't think she should be asked to be committing to it so I'll let you rephrase.

BY MR. EVANS: Yes, sir. I would like to get a case for that, but I'll continue with this witness at this time, Your Honor.

BY MR. EVANS:

Q Could you consider the death penalty yourself if the facts justified it and the law allowed it?

A I don't think so.

Q You don't think so?

A That I could.

Q All right. I want to go back to something we talked about the other day. You work at ADP; is that right?

A Yes.

Q And you work with the Defendant's sister, Sherita Baskin?

A Yes.

Q Now, the other day, I think you said that you do not work close to her?

A No, I do not.

Q Would you think about that for a minute?

A I do not.

Q Are you sure that you do not work side by side with her?

[1297] **A** No, I do not.

Q And you're saying that under oath?

A Yes, sir.

Q You've also said that you know – in addition to Sherita, you know Nelson Forrest and Reverend Lewis; is that correct?

A Yes.

Q And you're saying that knowing none of those would affect you in any way in this case?

A No, sir.

BY MR. EVANS: Nothing further, Your Honor. Wait a minute, Your Honor. That's all we have, Your Honor.

BY MR. CARTER:

Q Ms. Cunningham, let me just briefly make sure you're not confused about something and that the record is clear on this.

Now, you realize that whatever decision you make is your decision, not anybody else's decision. If you get picked on the jury, you're going to be on there with several other people. However, whatever your verdict is – and your personal verdict, based on your own moral conscience and not anybody else's and nobody can tell you how to vote. Do you understand that?

A Yes.

Q And so the question is: Could you listen to the evidence and consider it – it says consider – we're not talking about – can't nobody [1298] tell you how to vote. Do you understand that?

A Yes.

Q And do you also understand that our state legislature have deemed life without possibility of parole and the death penalty as appropriate sentences for a person convicted of capital murder. Do you understand that?

A Yes.

Q Either one. And that what you're required to do is just consider both, then decide which way you want to vote. Do you understand now?

A Yes, sir.

Q And that's your decision. And with that being the case, can you consider both options, then vote your conscience?

A Yes.

BY MR. CARTER: Thank you.

BY THE COURT: You may step down, Ms. Cunningham. And when you go back, don't sit out there and talk – you can't go back out among your jurors and talk about what you testified to in here.

BY JUROR: Okay.

BY THE COURT: And if you'll step back out, and then we'll call the next one in.

(JUROR LEAVES THE COURTROOM)

* * *

IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED 1187-1337 VOLUME 32 of 47

EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM: Circuit Court

COUNTY: Montgomery

TRIAL JUDGE: Joseph H. Loper Jr.

::::::

First, I want to know if you have heard anything about this case or had any knowledge of the case or know any facts of the case.

A Not – just a few rumors and stuff. Right after it happened, I moved to Eely, Nevada. And after I come back, I have heard a few things, not very much.

Q And so you moved to Eely, Nevada?

A Yes.

Q And how long were you in Nevada?

A Four years.

Q And by that time, I guess most of the talk had disappeared if there –

BY MS. STEINER: I'm going to object to leading, Your Honor.

BY THE COURT:

Q And Ms. Burnside, have you heard any facts about this case that would cause you to form an opinion as to guilt or innocence of –

A No, sir.

Q – Mr. Flowers?

A No, sir.

[1300] **Q** Would you be able to lay aside any facts you might have heard and base your decision on the evidence presented here in court?

A Yes, sir.

Q And would you do that?

A Yes, sir, I would.

Q Also, the State – well, let me back up. The way the case works is on a capital murder case is it can possibly be a two-phase trial. First phase would be the guilt or innocence. If Mr. Flowers is found not guilty, it concludes. There's not a second phase at all.

But if he were to be found guilty, then the jury would be deciding what the appropriate penalty should be. The State of Mississippi would be seeking the death penalty. They would put on aggravating facts which would show in their mind why the death penalty should be – would be appropriate.

And Mr. Flowers will be putting on what's called mitigating factors. That would be things that, in his view, would be reasons why the death penalty would not be an appropriate penalty.

And so I want to know if the facts justified it and the law allowed it, could you consider the death penalty as a sentencing possibility?

A That I don't think I could do. I don't know if I could do that.

BY MR. CARTER: I can't hear, Your Honor.

[1301] **BY THE COURT:** Can you speak up because –

A I don't – I don't know if I could consider it, sending anybody to death. I don't know if I could do that.

BY THE COURT:

Q And can you explain further your views on that?

A I just never been put in a predicament. I've always just don't know if I could do that. It's just the best way I can explain it. I just don't think I could do that.

Q Again, let me explain. You're not committing to do it or not do it. You're just – we just need to know if that's something that would be in your mind where you could think about it and you could consider the possibility of it.

A I could think about it and consider it. That's all I could say.

Q And would you consider the imposition of the death penalty, if you were on the jury and it got to the second phase?

A If I was on there, yeah, I guess I'd have to.

Q So if the facts justified it and the law allowed it, you would consider it?

A Yes.

Q Also, if he did not receive the death sentence – if he was convicted and the jury did not impose the death sentence, he could be facing the [1302] possi –

and would receive the sentence of life without parole. So is that a sentencing option that you could consider, also?

A Yes. I could consider that.

Q And so you would consider and have an open mind as to both sentencing options then; is that correct?

A Yes, sir.

BY THE COURT: Okay. Mr. Evans.

BY MR. EVANS:

Q Good morning, Ms. Burnside.

A Good morning.

Q If you were a juror on this case, in the sentencing phase, would you just automatically vote for life sentence?

BY MR. CARTER: Your Honor, I object. She's already said that she could consider both.

BY THE COURT: I'll sustain the objection.

BY MR. EVANS: Your Honor, are you saying I can't ask her if she would automatically vote for a life sentence?

BY THE COURT: Well, I'll reverse my ruling. I think that is appropriate.

BY MR. EVANS:

Q If you were picked as a juror – let me explain what I'm asking. Because of your beliefs on the death penalty, would that force you, if you had to make a decision of life or death, to just [1303] automatically vote for life?

A I'm not sure if I'm understanding what you're asking me –

Q All right. I want to make sure you understand.

A – can you explain it?

Q If you're picked as a juror in the case, the first phase of the trial deals with guilt or innocence. If this defendant is found guilty, we go into the second phase where the jury will be asked to give the death penalty by the State.

BY MR. CARTER: Your Honor, I object to him going back over the same question. The Court has already asked –

BY MR. EVANS: Your Honor, she said she did not understand it. I'm trying to explain it to her.

BY THE COURT: I think he can explain his question, because she did say she did not understand.

BY MR. EVANS:

Q And in that phase, the State will be asking for the death penalty and the defense will be asking for a

life sentence. My question is simply this: Because of your beliefs that you have some problems with the death penalty, would those beliefs cause you to just automatically vote for a life sentence instead of the death penalty?

A No. I can keep an open mind about it –

[1304] **Q** Okay.

A – but that's all I can say. I just – (shaking head).

Q And when were you sued by Tardy Furniture?

A I don't remember. Let me explain that. I worked for Ms. Bertha. She hired me to work for Mr. Tardy before she was married to him the first time. I was caring for Ms. Lena Tardy. That's how I met Ms. Bertha. So when me and my husband was going through a divorce, she let me have some furniture. And she said that she was going to note it on the book. Sometimes, I cleaned up for her and I paid for it and we just have, like, a little understanding about it. Okay. When she got killed, it was still on the book. And then her son-in-law – when I came back from Nevada, then that's when I had to pay for it. I don't remember when it was.

Q So there was a dispute between you and her son-in-law?

A No. It wasn't a dispute. He just –

Q Well, did you agree that you owed it?

A Yes. We had no falling out about it. I had the funds, and I agreed I owed it. When I went to Nevada, I guess it was just a space where I owed him. When I came back here and went to work, I paid him for it. We never had no misunderstanding about it.

Q If it wasn't no misunderstanding, why did [1305] it have to go to court?

A I'm not quite sure about that. I remember them bringing the papers after I come back here to go to work. Maybe he found out I was back or what. But then I went down to the store – that's when they had moved the store over to where the other building was – and I talked to him about when I paid it. We never had a falling-out about it.

Q But you did have to be sued over it?

A Yes. I can't remember the –

Q And there was a judgment against you?

A Yes. But it was no falling-out about it.

Q Is there anything about that, that would cause you any difficulty in this case?

A No. Because he is a distributor for something for one of our salesman at Super Value where I work, and he come in every Thursday, and the lady make a order so I see him like on a weekly basis. But, you know, sometimes, I speak if it's – because she see him like over in her office, so no, it's nothing about that would make me have no –

Q When I was asking the questions the other day about jurors that could judge other people, you stated at that time that you could not judge anyone. Why did you state that?

A Well, because I – you know, I prefer not to judge anyone. But then when they come back and say could I be fair. My thing is I prefer not to judge anyone. But now, I will be fair.

[1306] **Q** All right. Who will you be fair to?

A I will be fair to whoever evidence is presented. I will be fair. Because I would want somebody to be fair to me or my children or my family. That's the only way I can explain it.

Q So now you are –

BY MR. CARTER: I object. She's answered that question. He's badgering this witness.

BY MR. EVANS: Your Honor, I don't believe this witness is badgered.

BY THE COURT: I think I'll overrule. He hasn't even asked a question.

BY MR. EVANS:

Q So you have changed your mind, and you say now that you could judge someone; is that correct?

A Well, basically, I haven't changed my mind. I just prefer not to be in a predicament where I have to judge somebody.

Q So you still have a problem with judging someone?

A I still have a problem with that.

Q Would that problem be such that you would think about it if you were picked on a jury?

A Well, I'd have to say yes.

Q It would? So that might affect your judgment in the case; is that right?

A It could, possibly, yes, sir.

Q And I – I'm not trying to get personal but these are things we need to know. Your son was [1307] convicted of robbery; is that right?

A Yes.

BY MR. CARTER: Same objection, Your Honor.

BY MR. EVANS:

Q And since this case –

BY THE COURT: Overruled.

BY MR. EVANS:

Q Since this case is a murder during the commission of a robbery, do you think that you might think of your son when you were being asked to decide this case?

A I thought about it. And it wouldn't have no affect on it, because my son – he told me that he did do it, and I had no problem with it.

Q So that issue wouldn't affect you?

A No.

BY MR. EVANS: Thank you, ma'am.

BY THE COURT: Mr. Carter.

BY MR. CARTER:

Q Ms. Burnside, if you got picked on the jury, you would be fair to both sides, wouldn't you?

A Yes, sir.

Q And despite the fact that you don't like to judge, if you got picked you would, in fact, judge and be fair to both sides; is that correct?

A Yes, sir, that is correct.

BY MR. CARTER: Thank you.

BY THE COURT: Ms. Burnside, you may step [1308] down. Ana ask you when you return out there, do not talk about, out there with your fellow jurors, what's been discussed in here.

BY JUROR: Yes, sir.

BY THE COURT: And it may be a while longer before you have to wait around, and just please be patient. We're moving as fast as we can.

BY JUROR: Yes, sir.

(JUROR LEAVES THE COURTROOM)

* * *

IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED 1187-1337 VOLUME 32 of 47

EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM: Circuit Court

COUNTY: Montgomery

TRIAL JUDGE: Joseph H. Loper Jr.

Curtis Giovanni Flowers v. State of Mississippi

Kathy Gillis, Clerk

TRIAL COURT #: 2003-0071-CR

* * *

[1327] **BY MR. EVANS:** Your Honor, before we do that, I have a person here that I would like to put on the stand in response to some questions that I asked one of the jurors, to make a record, if I may. It's a Ms. Crystal Carpenter.

BY THE COURT: You may. Well, where is she?

BY MR. HOPPER: I'll get her.

BY THE COURT: Is this Ms. Carpenter?

BY MR. EVANS: Yes, sir. And she may need to be sworn.

(WITNESS IS SWORN BY THE COURT)

BY MR. EVANS: If you would, come around and have a seat up here, Ms. Carpenter.

BY MR. CARTER: What's her name, again? Crystal Carpenter?

BY THE COURT: Correct. I mean, I'll have her state her name for the record. State your name for the record, please.

BY THE WITNESS: Crystal Carpenter.

DIRECT EXAMINATION

BY MR. EVANS:

Q Ms. Carpenter, where do you work?

[1328] **A** Advanced Distributor Products in Grenada.

Q And is that known as ADP?

A It is.

Q How long have you worked there?

A Almost 18 years.

Q And what is your job title there?

A Quality control clerk.

Q You work in the office?

A I do.

Q Did somebody from my office contact you in relationship to where two individuals worked at ADP?

A They did. John Johnson did this morning.

Q All right. Do you know a person by the name of Tashia Renee Small Cunningham?

A I do.

Q Where does she work?

A On the Raw 2 line.

Q The Raw 2 line?

A Uh-huh.

Q Do you know a person by the name of Sherita Baskin?

A I do.

Q Where does she work?

A On the Raw 2 line.

Q How close in relationship to each other is their work stations?

A Probably about nine or 10 inches.

Q Nine or 10 inches?

A Uh-huh.

[1329] **Q** So they work side by side?

A They do. Like I said, some days, you know, if somebody's not there, they might have to move up and down. But that's their regular jobs.

Q And do they have to converse with each other each day during – because of their work?

A Yes, sir, they do.

Q And explain that if you would, briefly.

A Well, I mean, we all have to communicate together up there. But, I mean, with them working side by side, you know, if there's a problem, like, with a label or something like that, they have to communicate with one another.

BY MR. EVANS: Nothing further, Your Honor.

BY THE COURT: Anything?

BY MR. CARTER: Yes, sir.

CROSS EXAMINATION

BY MR. CARTER:

Q How long have they been working side by side?

A Oh, however long they've been there. I'm sure most of them's been there probably about at least seven or eight years at the most or maybe a little bit more.

Q And do they always work on the same project or task, each one of them? I don't know how the job

operates, but I'm assuming – it's an assembly line. Is that what you're saying?

[1330] **A** It is.

Q Is there some product coming down the line?

A It is the same product every day.

Q Each has to do something to it?

A Right.

Q And you've observed them – personally observed them on a daily basis?

A I do. Like I said, unless, like somebody might be out and, you know, they might have to move another one down the line or something, but that's where their regular jobs are. Because I have to go by there every day.

Q Are there records kept as to the particular location of every person?

A It is.

Q On every day?

A It is.

Q Do you have those with you?

A No. It will be found in human resource.

Q Can you provide them? Can you get them and provide them to substantiate your testimony?

A I can.

Q And would you do that for us?

A I will.

Q Okay. And when could we – could that be available?

A I'll. have to contact human resources as soon as I walk out of here.

[1331] **Q** Okay. And so your testimony is – how many people – what did you call it – Raw 2?

A Raw 2 line.

Q Raw 2 line. How many persons are on that line?

A It's probably anywhere from, I'd say, 25 to 35.

Q Okay. And each person is assigned like a particular spot that they have to be in? Or can they be at the different place on the line?

A No. They are assigned to a particular spot. Like I said, if somebody is out and they're running, maybe, a smaller unit or something, then they can move the person down, you know, on the up flow or the down flow.

Q Okay. And you are sure that as of this Monday, or last Friday, they were, in fact, working next to each other?

A Right.

Q Okay. And the records reflect – the record will reflect that just as your personal having observed them doing that?

A Right.

BY MR. CARTER: Okay. One moment.

(PAUSE)

BY MR. CARTER: No further questions, Your Honor, except that we object to the district attorney's office going down to – well, I'll have to do it without the –

[1332] **BY THE COURT:** Ms. Carpenter, you may step down, and you're free to go.

(WITNESS LEAVES THE COURTROOM)

BY MR. CARTER: Your Honor, I just want to go on the record objecting to the district attorney's office going to people's jobs and contacting their supervisors and – during the voir dire, before voir dire is even concluded. And with the intention of trying to get information out in the street, out in the public that certain witnesses are potentially lying. And we further –

BY THE COURT: Juror, not witness. It's juror.

BY MR. CARTER: Juror. I'm sorry. Particular jurors are lying. And we further object to any ruling being made as to whether or not this juror is lying until we see some records made in the ordinary course of business to substantiate her personal testimony.

BY MR. EVANS: Your Honor, I had received evidence or I had received communications that this juror worked next to Ms. Baskin. I asked her in front of the whole panel if she worked next to her. She denied it, said she worked on the far end of the line. To make sure there was no misunderstanding, I clarified that on individual voir dire and [1333] asked her if she worked next to her. She flat denied it. Said that she did not. I think it's my obligation to the Court instead of me just asserting that I think she works to her – next to her to put on proof if that is, in fact, true, which I elicited to do.

This juror was not contacted. She had no knowledge that they were contacted. I did not have the place contacted for any purpose other than to ask one question, where did they work in relationship to each other. I would ask that this juror be brought back into Court and asked again if she understands the oath and if she works next to her.

BY THE COURT: I think this juror's already said under oath what her response is, and I don't see any need to go further on this issue at this time.

BY MR. EVANS: I would ask that at this point she be struck for cause.

BY MS. STEINER: Your Honor, two observations. One, in respect to my prior concerns expressed by the district attorney having repeatedly raised in the public view the specter of the D.A.'s office investigating and charging with perjury on the basis of there were two jurors charged in open court the last time.

I believe this is part and parcel of [1334] that same effort, and we believe it is improper for the reasons said and further cited in support of our prior motions that the State be precluded from engaging in any sort of death qualification of jurors and to strike the death penalty because the heightened scrutiny and standards applicable in the death penalty case require, for all the reasons Mr. Carter says, you know, scrupulous attention to lack of misconduct and I believe – interference with the process by the district attorney, and I believe this is – this sort of thing is in support of that prior motion as well.

BY MR. EVANS: Your Honor, and obviously, the Defense doesn't want the jurors to tell the truth and to find out what the truth is, but the State wants truthful answers from every juror that is here.

BY MR. CARTER: So do we.

BY THE COURT: Well, voir dire, I think, means to speak the truth. And if I've got jurors that aren't speaking the truth during voir dire, then I think it's appropriate to come forward and present proof of that. Whether now is the time to do it or whether we should have waited till conclusion of voir dire is, you know, subject to question.

But if either of you have notion that [1335] somebody has not been truthful, then I will – you know, I think you've got a responsibility as an officer of the court to come forward with that.

I don't think at this time that's grounds for cause. I think certainly, you know, the State can preempt orally. But I mean, we've got the sworn testimony of Ms. Cunningham, and we've got Ms. Carpenter's sworn testimony. And at this point – mean, I can't have collateral issues relating to all the jurors. But as I say, I think that would be grounds for a preemptory strike if the State chooses to exercise one at some point.

(To the bailiff) Bobby Lester.

* * *

IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED 1187-1337 VOLUME 32 of 47

EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM: Circuit Court

COUNTY: Montgomery

TRIAL JUDGE: Joseph H. Loper Jr.

::::::

A Yes, sir.

Q – so if you would now, just tell us what – how you came to hear about the case and [1336] things like that.

A I was working in Winona at the Bank of Winona when the incident occurred. Shortly – I'd say minutes after it happened, we had – people began to come into the bank, people crying, people telling us that there had been an incident down there, that Ms. Tardy had been murdered. And, of course, that's where it all began. And community talk and the local newspaper publications, just – that's basically where I've heard about it.

Q And have those things caused you to form an opinion as to the guilt or innocence of Mr. Flowers?

A We have been talking about this now for 14 years and hearing about it, and the cases have gone on and on. I suppose, you know, if I said that I did not have an opinion of some kind, I'd be being untruthful to you. But if the question is if I – am I stuck on an opinion? My opinion is just from what I've heard people say. I've never heard any – any facts, I guess.

Q Well, could you, if you were called as a juror, lay any opinion aside that you might have formed and base your decision only on the evidence and on nothing else but evidence presented here in this court?

A Yes, sir, I could.

Q And could you lay aside anything that you might have read in the paper, heard about, gossip in [1337] the street and anything else and base your decision just on the evidence in court?

A Yes, sir, I could.

Q If you had read something in the past or heard some gossip out in town about the case but that's not proven in court, would that come into your play or your consideration at all when deliberating?

A No, sir.

Q Also, the situation is if the State of Mississippi obtains a conviction on the first part of the case, there would be a second phase. The first phase is guilt or innocence is decided. If he's found not guilty, the case ceases. It's over. If he was found guilty, then we would go onto a second phase. It's called the sentencing phase. At that time, the jury would be called upon to make a decision as to the appropriate sentence. The appropriate sentence could be the death penalty or life without parole. The State will be putting on aggravating factors, which would show in the State's mind why the death penalty would be appropriate.

The Defense would put on mitigating factors, which would be in their minds reasons why the death penalty should not be imposed or would not be appropriate.

Could you consider – would you listen to the evidence and all the facts and the law given to you by the

Court and would you consider both of [1338] these options?

A Yes, sir.

Q And would you, before you hear anything, be leaning toward either option?

A No, sir.

Q So you're telling me that you will keep an open mind and consider both options equally prior to hearing any testimony?

A Yes, I would.

BY THE COURT: Mr. Evans?

BY MR. EVANS: No questions.

BY MS. STEINER:

Q Good morning, Mr. Lester.

A Morning.

Q I believe in response to His Honor's question, you said you were working at – this is Bank of Winona?

A Yes, ma'am.

Q How – how far from the Tardy Furniture Store was Bank of Winona?

A Couple of blocks.

Q All right.

A Two or three blocks.

Q All right. But within a few minutes of the incident happening there –

A Yes.

Q – people who were so personally affected by the deaths of one or more of these people, that they were in tears –

[1339] **A** Yes.

Q – were speaking to you personally about those –

A To whoever would listen to them.

Q Right. And you were among them?

A Yes.

Q This broke your heart, I'm sure, as it did these peoples.

A It shocked me.

Q And I believe you said you'd been friends for years with Ms. Rigby's husband. Is that correct?

A Yes.

Q So you felt his pain. I would imagine, Oh my God, I want to be there to pray with Bennie when he hears this?

A I don't know that I felt that exactly. But yes, I was concerned for all the families.

Q All right. And you have that knowledge from the minute of the pain of your friend Mr. Bennie Rigby?

A Uh-huh.

Q Are you in his church?

A No.

Q Do you participate with his singing in any of his events?

A No. I have sung at events that he has sung at, but I've never sung with him that I can recall.

[1340] **Q** Would that include the event in Kosciusko as a fund raiser for the reward fund in this case? Did you perform at that one?

A For what?

Q A few months – a month or two after this, there was a fund raiser which Mr. Rigby's gospel group performed, raising funds for a reward –

A Oh, no. No.

Q – fund to assist in this investigation?

A No.

Q Did you attend that?

A No.

Q You didn't perform that? Now, I believe you've said you've known the Tardy family your whole life. That would include Ms. Bertha.

A Yes. Knew more Roxanne. She was a year older than I was in the school.

Q All right. And you graduated with her from school?

A No. I graduated from another school, but still in town.

Q All right. Was that Mr. Tom Tardy? Was he at your school? I'm trying to figure out who you graduated with.

A I'm a year younger than Roxanne.

Q Okay.

A I've never met Mr. Tom Tardy.

Q Okay. And was Bank of Winona where Tardy's Furniture did its banking?

[1341] **A** Yes.

Q And that Sherry – Sharon Martin was the window clerk?

A That name –

Q Bailey, I'm sorry. Sherry Bailey – Sharon Bailey was the window clerk that morning.

A No. They must have had an account at another bank as well.

Q All right.

A Because she's never worked for us.

Q All right. And did you attend Ms. Rigby's funeral?

A No, I did not.

Q All right. Did you have bank employees who you gave leave to, to attend Ms. Rigby's funeral?

A I don't recall. I feel like probably so, yes.

Q Same for Ms. Tardy's funeral and Mr. Golden's funeral?

A Like I – I don't – I do not recall that, but it would be possible that I did, yes.

Q All right. And that was certainly something after your experience that day, you were not going to say, "Sorry, I need you –

BY MR. EVANS: Your Honor, I object. That is not proper, unless she can show there is some connection with this defendant. It's nothing improper about letting employees go [1342] to funerals.

BY MS. STEINER: Your Honor, I'm asking only about the funerals of the victims and his role with respect to facilitating attendance.

BY THE COURT: Well, I'll – ask it, but I'll ask you to get to the issues that were the purpose of individual voir dire, because – I'll let you wrap this line up, but move on to that, because we had the opportunity when we were group voir diring to ask these questions.

BY MS. STEINER: Your Honor, in light of the Court's admonishment that we were not to go into knowledge about the events and since mitigation and victim impact testimony are part of the events that will be considered, we felt that these were the things that the Court wished us to reserve for individual voir dire. And that is why we were pursuing them and intend to continue pursuing them –

BY THE COURT: I told you to wrap it up, and that he could answer this question.

BY MS. STEINER:

Q Now, Mr. Lester, you did testify that you have formed an opinion on the basis of your 14 years of hearing about this case; is that correct?

A Yes.

Q You've also testified that people – it's [1343] been dragging – we want it over with. Is that correct?

A I'm sorry?

Q Didn't you say something about the case has gone on and on. I believe you said that in response –

A I may have said that.

Q All right. So you would like it to be over with. Is that correct?

A I would like for it to be over with, yes.

Q All right. And if you serve as a juror, that desire is going to walk into the jury room with you?

BY MR. EVANS: Your Honor, I object. That has nothing to do with whether – I think everybody wants it to be over with. But that has nothing to do with whether this juror can be fair and impartial and base his decision on the evidence. It's irrelevant.

BY THE COURT: I sustain the objection. I mean, you can rephrase, if you would like, but I. . . .

BY MS. STEINER:

Q If you are deliberating on this jury, your desire to have – shared with, quote, everyone as Mr. Evans has said, to get this over with, will walk in that jury room with you; is that correct?

A To find justice and to – to bring an end to – to this for everyone, yes.

[1344] **Q** So if you're voting one way and 11 of your fellows are voting another way, you know that if you keep holding out on your one vote, it won't be over. Is that correct?

A I realize that.

Q On guilt? Now – and your desire to have it over with will be there when you're deciding whether to change your vote? Is that –

A My desire to have it over with has nothing to do with my desire to make sure that justice is done in this case.

Q And you have an opinion as to what justice would be in this case; is that correct?

A I have no idea, because I haven't heard the facts other than what I've – just hearsay on the street.

Q I thought you told His Honor both when we had everybody else here –

A Uh-huh.

Q – and then this morning that you had formed an opinion?

A I had formed an opinion, based on the hearsay I've heard on the street.

Q And as you walk into that jury room, before you've heard any evidence, you – that opinion is one way or the other – I'm not going to ask you what it is – and right now, you believe that justice would be done if – as far as you know, nothing changes, in the way that your opinion is [1345] now; is that correct?

A The judge asked me if I could lay my opinion aside and listen to facts and make what I thought was a fair decision based on the facts that I hear, and I can.

Q I'm not asking you that question –

BY MR. EVANS: Your Honor, he is answering her question.

BY MS. STEINER:

Q I am simply asking, as you sit here today, you have an opinion, is that correct, about what would be justice in this case?

A I can't say about what would be justice in this case. I have an opinion on – or maybe a – over time you develop your own idea of what may have happened.

Q And you sat in group voir dire and several people with opinions weren't here when – when you came back on Monday morning –

A Uh-huh.

Q – and when you came back on Tuesday morning –

A Uh-huh.

Q – and you, like them, share an opinion – have an opinion as you sit here now.

A I have an opinion.

Q All right. Now, His Honor began – His Honor inquired about your ability to consider the two punishments for capital murder established by [1346] the State of Mississippi.

A Yes, ma'am.

Q Now, on your jury questionnaire, you checked the box that said you strongly favored the death penalty?

A For crimes that merit it.

Q I – well, absolutely. You can't impose it for crimes that don't.

BY MR. EVANS: Your Honor, I object to these crazy questions. He's answered it. It did not call for any extra comments.

BY MS. STEINER:

Q His Honor will – His Honor will be and the State will ask for and we will anticipate that the jury will be instructed that one of the two sentences for – that this jury may consider the punishment of death – the death penalty and the punishment of life in prison without parole.

Now, I believe when His Honor said as you sit here, you don't favor one over the other; is that – was that your answer?

A Favor – I don't favor one over the other?

Q Yes. Do you favor the – one of those punishments, as you sit here now, over the other – let's assume the person has been – you have found –

BY MR. EVANS: Again, Your Honor, that is inappropriate questioning. It is not the proper question.

[1347] **BY THE COURT:** I don't think hypotheticals are appropriate during voir dire, and that's apparently what you're –

BY MS. STEINER: Well, allow me to rephrase.

BY MS. STEINER:

Q As His Honor said, we don't even get to considering what the punishment has been until a jury has determined unanimously, you sitting as juror, will have to determine that Curtis Flowers was guilty of at least one – and in this case, you could consider up to four separate capital murders; you understand that?

A Yes.

Q You could have – you wouldn't be considering penalty unless and until you had made that finding.

A Yes.

Q You will have made that finding, and you will have arguments from the State that any capital murders of which you have found beyond a reasonable doubt Mr. Flowers is guilty of were brutal and you have – and you will probably hear testimony in addition from people who were personally affected, your friend, among others, Bennie Rigby about his grief and the loss and his anger.

Now, at that point, you found Mr. Flowers guilty, deliberately committing what the State would characterize as four brutal murders. You may have [1348] heard your friend Bennie Rigby –

BY MR. EVANS: Your Honor, I object. She's trying to tell him what he is going to hear and have to rely on. He is going to have to listen to the evidence that comes out in court, listen to the Court's instructions and make his determination of what's appropriate at that time based upon that. And for her to sit up

here and try to argue to him what he's going to hear is completely inappropriate.

BY MS. STEINER: If the Court please –

BY MR. CARTER: That's an invalid objection Mr. Evans is making. And the State is trying to instruct him –

BY THE COURT: I think Ms. Steiner is asking the questions, and she can argue the objection. It's appropriate for her to make the argument, not you. And I'm sure she can speak for herself.

BY MS. STEINER: Your Honor, I agree with Mr. Carter and was opening my mouth to say I believe that is an invalid objection, as the State well knows. This is the evidence that will be faced, and we are entitled under *Morgan* to voir dire about how a juror will deal with mitigation in light of that, and these are proper questions, and –

BY THE COURT: I'll allow you to ask [1349] questions. And I'm not – and this is your style of questioning – and I don't mean to – I'm not admonishing you, but your questions sometimes get so long that I get confused, and I don't – and I'm not saying that to offend you, but –

BY MS. STEINER: So do I, Your Honor.

BY THE COURT: And you know, if you could maybe shorten the length of them, it might be helpful sometimes to a witness because, as I say, I get confused sometimes.

BY MS. STEINER: Your Honor, I have my great-great-grandfather, my great grandfather and my grandfather were all preachers, and they all wrote sermons, and their sentences were even longer. I believe I inherited it. I'm sorry. Let me step back.

BY MS. STEINER:

Q You will be in the jury room. If you are even asked to consider these two penalties, Mr. Flowers – you will have found him guilty of at least one capital murder. You understand that?

A (Nodding head).

Q You understand that you will, at the point at which you begin thinking about what – which of those two sentences is appropriate have heard – well, you will have heard aggravating factors relating to the crime that – one of which will likely be a particularly brutal and heinous crime.

[1350] **A** Yes.

Q You will have heard your friend, Bennie Rigby, testify probably – they intend – they put him as a witness here – probably about the grief and pain he and his children have suffered. You may even hear from some of his boys, who I think you know. Is that correct? You know who his boys – you know –

A I know who they are.

Q You raised your hand –

A I know who they are.

Q – that you were acquainted with them. At that point, after you've heard all of that, Mr. Flowers will stand up and put on matters in mitigation of sentence, asking you to consider the life sentence without parole. And they may have nothing to do with the crime. Do you understand that?

A Yes.

Q At that point, isn't it fair to say you would think the death penalty was justice in this case?

BY MR. EVANS: Again, I object. She's trying to put forth part of the facts that are there and get him to make a decision on what sentence he would give at this point and that is inappropriate.

BY MS. STEINER: I am not asking him what sentence he would give. I'm asking what [1351] would be first in his mind –

BY MR. EVANS: She's asking for him to pledge a verdict, which is improper.

BY MS. STEINER: I'm asking him whether he could – let me rephrase that.

BY MS. STEINER:

Q At that point, would your mind be open to fully consider facts about Mr. Flowers' family and his childhood there, how he was family man?

A Yes.

Q Your mind – you could consider those?

A I would consider that.

Q You would not prefer the death penalty at that point?

A No.

Q Would you prefer life – would – would – you would not be – you would have an open mind with respect to life without parole?

A I would have an open mind.

Q Could you vote for life without parole under those circumstances?

BY MR. EVANS: Your Honor, again, unless the Court is going to allow us to go into this line of questioning, it's improper for the Defense to go into it.

BY MS. STEINER: I thought you had submitted the Court a –

BY MR. EVANS: The Court hasn't ruled on it yet. I don't know what the ruling is.

[1352] **BY THE COURT:** Well, I think he's answered the question already.

BY MS. STEINER: Thank you, Mr. Lester.

BY THE COURT: Mr. Lester, you may step down. And when you go back out, don't talk to anybody about what you've been asked in here.

(JUROR LEAVES THE COURTROOM)

* * *

IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED 1338-1488 VOLUME 33 of 47

EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM: Circuit Court

COUNTY: Montgomery

TRIAL JUDGE: Joseph H. Loper Jr.

::

Curtis Giovanni Flowers v. State of Mississippi

::

Kathy Gillis, Clerk

::

TRIAL COURT #: 2003-0071-CR

* * *

[1359] (JUROR LEAVES THE COURTROOM. JUROR NO. 53, FLANCIE JONES, ENTERS THE COURTROOM)

BY THE COURT:

Q Ms. Jones, if you'll come forward, please. What we're doing now is asking questions of individual jurors that we felt was appropriate to ask privately instead of out in front of your fellow jurors.

And first, I want to know if you have any knowledge about this case, if you've heard about it

through the years or read anything, seen it on T.V., the radio or Internet or anything?

A Nothing. Nothing close because I've always worked the third shift. So for 17 years, I've worked at Heat Craft, which I quit in '07. But during this time, I worked nights. I slept days. I [1360] only got up to get my husband off to work or to interact with my children off the bus.

Q Right.

A Very little. As far as conversating with anybody about it, I didn't have time for that. Now I do – I am an avid gardener. So between that time – any time I had to work in my garden – and then a T.V. person – I'm not a T.V. person. So it's not a lot I heard. It's just that – you know how you hear people talking about it, but as far as being interested and conversating about it, I just never really conversated to anybody about it, because – it might not even sound right to you, but I'm a country girl. I live on a farm. Certain things do things to certain people, and that didn't do it to me because I'm a – I guess I can't say a loner, but I just don't think (inaudible).

BY THE COURT REPORTER: I'm sorry. What?

A I'm not a – I kind of keep to myself as far as the way I live. I live on a farm, so I do the things that people on a farm do. But as far as going from house to house and telephoning and whatever, I don't do that.

Q And if you did hear or the thing – I mean, you know, I don't even want you to tell us what you heard. But can you lay aside anything you might have heard about the case and listen to the evidence here in court and base your decision only on the evidence and on nothing else but the [1361] evidence?

A Nothing else. (Nodding head.)

Q The next question concerns the possibility if it got to the point where there was a sentencing phase. What happens in a capital murder case is a jury first decides the guilt or innocence of the person that's on trial. If it got to the point where the jury found that person not guilty – not guilty, it would be over. There would not be a second phase.

But if the jury found that person to be guilty, then we would get into the second phase, which is called the sentencing phase. At that time, the jury would determine what the jury believed to be the appropriate sentence in the case.

The State of Mississippi, I understand, is seeking the death penalty in this case. The possible penalties, if it got to that point, would be life in prison without parole or the death penalty.

The State of Mississippi would put on aggravating factors, which are factors that they believe would justify the imposition of the death penalty. Then Mr. Flowers, through his attorneys, would put on proof called mitigating factors which, in his view, would be reasons why the jury should not impose the death penalty. So

will you – will you consider – or can you consider both of those sentencing options?

[1362] **A** (Nodding head).

Q And do you – having heard nothing about the case at all and no proof on mitigating or aggravating, do you have an open mind and an equally open mind as to both possibilities at this point?

A I have an open mind.

Q And you could consider both of those as possible sentences?

A I could consider both.

BY THE COURT: Okay. Thank you.

BY MR. EVANS:

Q Good morning, Ms. Jones.

A Good morning.

Q Ms. Jones, you are related to Hazel Jones; is that right?

A She's my sister-in-law.

Q Okay. And you are related to Angela Jones?

A She's my niece.

Q Okay. And she is the defendant's sister?

A That's something new. I didn't know that till you told me yesterday.

Q Okay. Knowing now that she is his sister and knowing now that Hazel Jones is his aunt, would that affect you? Would you be thinking about that if you were picked as a juror in this case?

A It would not affect me because we do not have any type of relationship. We can have a family reunion. They don't show up at the family reunion.

[1363] **Q** So you could completely –

A I could completely.

Q – set that aside. I noticed yesterday you were about 30 minutes late. Why were you late?

A Because I'm used to working nights and getting up in the morning is a big deal. I'm used to working nights, and my body has kind of gotten – I guess you have to work nights to understand it. That's the only reason I was late, because I ended up staying awake at night.

Q All right. And I think you've said that you knew, in addition to Hazel Jones and Angela, you know Archie, Sr. – Archie Flowers, Sr.?

A No, not that I know. No. I told you yesterday that if you told me that's him, that's the only way I would know him. I don't know him.

Q Okay. Correct me if I'm wrong. I thought that that was what you had said. I may have written it down wrong. You stated that you knew Connie Moore?

A I used to work at a place where they said she was getting married. And this particular guy that worked there, she was – she was going to marry him. But as far as knowing her, no, I don't know her.

Q Okay. Nelson Forrest?

A I went to school with a lot of Forrests, so I don't know which one is which.

Q And Danny Joe Lott?

[1364] **A** Well, I went to church with – I think with his uncle when I was little. That's the only reason I know his name.

Q Okay. And I think on your questionnaire, you said you were strongly against the death penalty.

A I guess I'd say anything to get off.

Q Okay. Well, are you saying that you didn't tell the truth?

A No, that's not that. It's just that if didn't have to be here, I wouldn't want to be here.

Q Well, I want to know when you put down you were strongly against the death penalty –

A I was trying to not be – I – really and truly, I don't want to be here. I'll say it like that.

Q All right. May I finish my question?

A Okay.

Q When you put down that you strongly didn't believe in the death penalty, were you being truthful?

A No. Because I was sitting up in the bed that night, and I had to fill out that paper and get it back to you. And I was late the first day because I couldn't find the paper. And I know if I'd lost it, I'd never get it back to you.

BY MR. EVANS: Your Honor, I don't have any further questions.

BY MR. CARTER:

[1365] **Q** One moment, Your Honor. Ms. Jones, you testified earlier that you could be fair to both sides. Is that correct?

A That's correct.

Q And you testified that you could consider both options of punishment.

A Yes, I can.

Q And if you got picked for a jury – served as a juror, you would make every effort to get here and to be awake and to participate as full as you can?

A Yes. Yes.

Q And there's no reason, as far as transportation wise and that kind of stuff, that you couldn't be here, is there?

A No.

Q So you could be here. And you don't have any doubt that you could be fair to both sides; is that correct?

A I have no doubt.

Q And you'd consider whatever's presented from the witness stand.

A I could.

Q Thank you.

A I'm sorry about being late. It was unintentional.

BY MR. CARTER: Thank you.

BY THE COURT: Ms. Jones, you may step down now. And when you walk out with your [1366] fellow jurors, don't talk about with them what was talked about in here.

BY JUROR: Okay. All right. Thank you.

BY THE COURT: Yes, ma'am. Thank you.

(JUROR LEAVES THE COURTROOM)

* * *

IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED 1338-1488 VOLUME 33 of 47

EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM: Circuit Court

COUNTY: Montgomery

TRIAL JUDGE: Joseph H. Loper Jr.

Curtis Giovanni Flowers v. State of Mississippi

Kathy Gillis, Clerk

TRIAL COURT #: 2003-0071-CR

* * *

[1402] (JUROR LEAVES THE COURTROOM)

BY THE COURT: I need No. 62, next, Ms. Copper.

(JUROR NO. 62, DIANE OWENS COPPER, ENTERS THE COURTROOM)

BY THE COURT:

Q Ms. Copper, if you'll come on down and have a seat.

You look a little nervous. Don't be nervous. Have a seat, ma'am. And what we're doing is we are asking each juror certain questions that we didn't want to ask out in front of everybody. And we're just – you know, felt like that it would be better because people might be more comfortable speaking without a big group out there. And so there was a couple of questions that we were asking about.

First concerning possible knowledge that you had about the case, if any. So have you read anything about the case or seen anything on the T.V. or newspaper or radio or talked to anybody or really have any knowledge about the case?

A Well, this time?

Q Yes, ma'am. Well, I mean, at any time since it happened in 1996.

A I read a little article about it. I think that was in last week's paper or something.

Q Okay. You read it in last week's paper?

A Yeah. Kind of glanced.

[1403] **Q** Okay. And have you – I guess, did you hear about it back in '96 when it first happened?

A Yes, sir.

Q And have you heard any talk through the years about the case or any – seen it in the newspaper and things?

A Yes, sir.

Q Has anything you saw, read or heard caused you to form an opinion as to the guilt or innocence of Mr. Flowers?

A I don't – could you –

Q Repeat the question?

A Right.

Q Right now, you have not heard any evidence at all.

A Right.

Q You know, you have not heard one – you know, any evidence.

A Right.

Q But without hearing any evidence at all, right now, have you already got an opinion as to whether he's guilty or not guilty?

A No.

Q And these things that you might have heard at some point in the past, can you put those things aside and not consider them but only consider the evidence that's presented here in court?

A Yes.

Q And so you won't let anything you've heard [1404] influence your decision if you're a juror?

A Right.

Q Okay. Next, concerns the possibility of the possible sentence. If Mr. Flowers is found not guilty, we do not get into anything concerning a possible sentence. But if he were to be found guilty, then at that time, the jury would decide what the jury felt the appropriate punishment would be. The options are life in prison without parole and the death penalty.

If the jury did not impose the death penalty, then there's an automatic sentence of life without parole. And I want to know if – could you consider both of those options as sentencing options if you were sitting as a juror?

A Yes.

Q And before hearing any proof at all, have you got any – are you leaning one way or another or can you just consider both of those equally as we stand here today?

A You're speaking of those two options?

Q Right. Life in prison without parole or the death penalty.

A Right. Yes.

Q Okay. And you understand we wouldn't even get to that phase unless he was convicted of the crimes for which he's charged.

A Right.

BY THE COURT: Okay. Mr. Evans, have you [1405] got any questions?

BY MR. EVANS: Yes, sir.

BY MR. EVANS:

Q Good evening, Ms. Copper.

A Good evening.

Q How are you doing?

A Fine. A little nervous.

Q Well, that's – there's nothing to be nervous over. We just got a few questions to ask you.

A Okay.

Q Now, I noticed that you told us the other day that you lived on Harper Street at one time?

A Yes, sir.

Q And that you knew where Archie and Lola and some of the Flowers lived over there down the street from there?

A Yes, sir.

Q That y'all lived on the same street.

A Not on the same street. Because they – they live on Cade Street, and I lived on Harper Street.

Q Don't they live at the corner of Cade and Harper?

A Well, I guess. I'm not – I – you know, my street is Harper and then its – as it go around – that's where I assume it was Cade Street. I'm not positive.

Q Okay. And you've stated that you worked [1406] with the defendant's sister at Shoe World?

A That's correct.

Q And which sister was that?

A Cora.

Q How long did y'all work together?

A Probably a year or two.

Q Okay. You worked with the defendant's father?

A Yes, sir.

Q How long did you work with him?

A Estimating, probably – possibly about the same, one to two years.

Q Okay. And I want to make sure my notes are right, because we can all write down things wrong. You stated that you knew his father Archie Flowers.

A Yes, sir.

Q You know his brother, Archie, Jr.?

A Yes, sir. I know his brother.

Q You know his mother Lola?

A Yes, sir, I do.

Q You know witnesses in this case, Hazel Jones?

A Yes, sir, I know her.

Q You know Kittery Jones, a witness in this case?

A Yes, sir, I know him.

Q And you know Danny Joe Lott, a witness in this case?

[1407] **A** Yes, sir.

Q And I think it was yesterday and my notes show that you said that the fact that you know all of these people could affect you and you think it could make you lean toward him because of your connections to all of these people. Is that correct?

A It – it's possible.

Q Okay. That would be something that would be entering into your mind if you were on the jury, wouldn't it?

A Yes, sir.

Q And it would make it to where you couldn't come in here and, just with an open mind, decide the case, wouldn't it?

A Correct.

BY MR. EVANS: Okay. Nothing further, your Honor.

BY MR. CARTER: What did she say?

BY JUROR: Correct.

BY MR. CARTER:

Q Ms. Copper, now you said you could put aside anything that you heard about the case up until now. Is that correct? In other words, any information you heard in the neighborhood or from the community or you might have read from an article or saw on T.V., you could put all that aside because you know that it's not supposed to be used on the trial. Is that correct?

[1408] **A** Correct.

Q You could put that aside. Now, this – you know a lot of people in this case and – but there's nothing – is there anything about any of these people that so important to you, like Mr. Flowers, Cora or those other people that you know, is there anything them [sic] that's so significant or so strong that you would not use your own judgment if – and would be hamstrung or be – or lose your own personal judgment as a result of knowing them?

That's probably confusing. Is it? It probably is. It's confusing to me.

What I'm trying to find out is just as you could put aside all the information you heard before about this case, could you not also put aside the fact – if you got picked as a juror, put aside the fact that you have met Mr. Flowers, that you know some other people in these case and be fair to the Tardys, the Stewarts, the Goldens, and Rigbys, and make whatever decision or vote

that you're going to make based on the evidence and the evidence only. Could you do that?

A I feel like I could. But, you know, it –

Q Is what you're saying –

A Of course, it would make me, you know, feel uncomfortable. But if I had to do it, you know, I got to do what I got to do.

Q Okay. So you're saying that – thank you. [1409] You're saying that you'll be uncomfortable. You'd prefer not to – I get the impression you're saying that you'd rather not be a juror. But if you got picked to be one, you would take the responsibility seriously, and you would follow the law and the rules that the Court give you, and you would put aside anything that you are required to put aside and make your evidence and make your vote based on just the evidence you hear in the courtroom. Is that fair to say?

A Yes, sir. That's correct.

BY MR. CARTER: Thank you. Thank you, ma'am.

BY JUROR: You're welcome.

BY THE COURT:

Q I just got – will you follow wherever the evidence leads in this case? Will you listen to the evidence and base your verdict on the evidence?

A Yes, sir.

Q And if the evidence showed Mr. Flowers guilty, would you find him guilty? I mean, could you find him guilty if the evidence showed he was guilty?

A Yes, sir.

Q And if the evidence showed or the State failed to prove his guilt beyond a reasonable doubt, could you find him to be not guilty?

A Yes, sir.

[1410] **Q** Then you're telling me, again, that you're going to the listen to the evidence and will wait and base your decision strictly on the evidence and no outside factors; is that correct?

A That's correct.

BY THE COURT: Okay. Thank you. You may step down. And when you go back out, don't talk about what we talked in here about with anybody out there about.

BY JUROR: Yes, sir.

BY THE COURT: Okay. Thank you, Ms. Copper.

(JUROR LEAVES THE COURTROOM)

* * *

IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED 1640-1790 VOLUME 35 of 47

EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM: Circuit Court

COUNTY: Montgomery

TRIAL JUDGE: Joseph H. Loper Jr.

Curtis Giovanni Flowers v. State of Mississippi

Kathy Gillis, Clerk

TRIAL COURT #: 2003-0071-CR

* * *

[1733] MRS. [sic] STEINER: – to the – to the process.

Your Honor, this is our objection under *Lockhart* and in general under the equal protection clause of the United States Constitution to the fact that by virtue of the elimination process to this date, even if you take the entire venire as of this morning, it had gone from a venire that was 42 percent African-American and 55 percent white. And there were two or three percent that who had not self-identified at the point at which

all the juror questionnaires were here on Friday and all the [1734] jurors had shown up.

As of this morning, that ratio had been halved on points, and the venire was 72 percent Anglo-American, white, and 28 percent African-American. With the course of today's challenges, I think that that ratio has not changed. That is still a statistically significant reduction in this venire.

And in fact, if the Court takes this, this situation and excuses all the remaining outstanding jurors – one, two, three, four, five, six – six of the African-Americans, we are going to be reduced. We were already reduced one by the challenges to 15 African-Americans. We will be down to fewer than 9 African-Americans.

And I, I can take a recess and get out my calculator. We are even statistically, significantly more reduced from the original venire that was summonsed, turned in jury instructions – jury questionnaires and is now before this Court. And I would renew the *Lockhart*, the Witherspooning had that significant discriminatory effect again.

And I would renew the motion with respect to – and 1, I would now re-urge this, when I've not previously urged. We had in the last trial urged that should this jury – that the prosecutor be, be precluded from making peremptory strikes because so much of this – because there is the history that has been found by the Mississippi Supreme Court of racial discrimination in jury selection with respect to this case by this [1735]

prosecution. It's happened actually – the predecessor in Flowers II, in Harrison County, found a Batson violation and ruled a strike by the State. So that in two proceedings and on the basis of what has been a persistent pattern of simply, you know, asking things that are clearly, if not flatly race or at least race-based –

THE COURT: Okay. Name one.

MRS. [sic] STEINER: Say what?

THE COURT: Name one.

MRS. [sic] STEINER: Yes. There were no questions asked of any juror who lived in the neighborhood of a white State's witness about what neighborhoods they lived in.

MR. EVANS: Your Honor, that –

MRS. [sic] STEINER: His main question –

MR. EVANS: I object.

THE COURT: Let her finish,

MRS. [sic] STEINER: One of his main objections – one of his lines of questioning was the neighborhood in which they lived. Acquaintanceship is fine. If neighborhood really matters for things to do with the acquaintanceship, there are anglo – white state's witnesses on our jury list and no questions were asked about people who lived in the neighborhood. We, frankly, don't think living in a neighborhood without some sort of acquaintance being known is, is particularly relevant. There has been – I mean –

THE COURT: As I recall it, there was a [1736] question about who lived in the neighborhood over there where Mr. Flowers' mom and daddy lived.

MR. EVANS: It is where he has lived, Your Honor. He lived at both locations.

THE COURT; And there, there is nothing race – there is no race issue there. And –

MRS. [sic] STEINER: Your Honor.

THE COURT: You know, I don't see why the State would be expected to ask the neighborhoods of where their own witnesses live, because I assume they know where their witnesses live. So I reject totally your statement that that is a race-based question.

MRS. [sic] STEINER: Your Honor, we are dealing with a venire that especially if we just excuse all these people of the first 45 that is so blaringly disproportionate to the population of this county.

THE COURT: You have got to look into the purpose, the reason. And the reason why is because Mr. Flowers has a number of brothers and sisters. His parents are well-known. Mr. Archie Flowers is apparently one of the most well-thought of people in this community. You have had countless numbers of African-American individuals that have come in and said they could not sit in judgment because of their knowledge of Mr. Flowers, and they could not be fair and impartial.

Counsel should have known that was going to happen from the first two or three trials – first three trials that had occurred over here. Counsel had an opportunity – because the first two trials, as you know, were tried [1737] somewhere else. But Mr. Flowers, as he had every right to do, and has an opportunity to be tried in his home county. The law allows that. But he cannot then come around and complain because people are excused because they know him.

And that is what – you know, if there is a statistical abnormality now, it is because almost every African-American that has been excused for cause, other than those on the death question, were because they knew him. And I mean, you know, he could have – if he would have wanted to elect to be tried somewhere else, there would have been a situation where he could have had a change of venue some location where there would be statistically more people of his race on there than is.

And I'll note that, you know, I think there was probably about and I'm not – because I haven't counted, but there is probably about seven or eight people that were on the death question alone, there was some that said because of death and other reasons – well, eight out of 600 that were originally called is, is statistically not material. Even eight out of 154 that finally started voir dire on Monday is statistically insignificant.

So you know, there is – nothing the State has done has caused this statistical abnormality. It is almost

chiefly because Mr. Flowers' family are such prominent people, and he has got so many relatives and so many friends and so many of his family members that have friends. But it is not anything that, you know, has [1738] shaken out that way. And as I say, this should not be a surprise to defense counsel, because that has been the way that has happened the past three trials. And so to claim surprise now about what you knew was going to occur is somewhat disingenuous.

MRS. [sic] STEINER: If the Court please, we are not necessarily claiming surprise. Although, this has been a much more radical reduction both in total numbers and in proportion than either of the prior two trials at which our office has been involved.

But Your Honor's suggestion that Mr. Flowers' right to a jury that comports with Fourteenth Amendment equal protection composition under *Castaneda* and *Swain* and all of those and a panel from which Batson – a reasonable equal protection challenge. His right to that, as well as his right to a fair and impartial jury, under the Sixth Amendment, those two things he has a right to that. And he has a right to be tried in his same county. And that he should not be required to choose between those two rights. Those are not necessarily –

THE COURT: And I did not say he had to choose between those two rights. But you know full well from past experiences in this county because of the number of people that know Mr. Flowers, they know his parents, they know his brother, they know his

sisters, and he – I mean he has got a large number of siblings. And all of those people – you know, I mean he is so well-known here that, you know, you've got a number of African-Americans that say I know him. I can't be fair. I know these people. [1739] I can't sit in judgment of their son. And there is –there is no way to avoid that if this case is tried in this county. Because this is the same type things that, that occurred in the previous trials where he had so many people that knew him.

You know, I don't – I hadn't kept a running count of anything in here but, you know, there is nothing that has – that has – no discrimination that's occurred that has caused this, what you call, statistical abnormality now. It is strictly because of the prominence of his family. And –

MRS. [sic] STEINER: Thank you, Your Honor.

THE COURT: – that is another reason.

And as far as the motion to prohibit the State from using peremptory challenges, there is no basis for that. Absolutely none. If the State looks at potential jurors and feels that they have right reasons for using peremptory challenges, that is their right. That is – each sides [sic] gets to make peremptory challenges.

But because Flowers III was reversed on Batson is certainly no grounds for saying that they should now be denied the right to use peremptory. The Supreme Court of this State has certainly never said that on a retrial you could not use peremptory challenges, nor has the United States Supreme Court ever said that.

And so you're pulling that motion totally out of thin air and without any basis in law or in fact for making it. So it's denied.

* * *

IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED 1640-1790 VOLUME 35 of 47

EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM: Circuit Court

COUNTY: Montgomery

TRIAL JUDGE: Joseph H. Loper Jr.

Curtis Giovanni Flowers v. State of Mississippi

Kathy Gillis, Clerk

TRIAL COURT #: 2003-0071-CR

* * *

[1756] (THE FOLLOWING PROCEEDINGS WERE HAD IN OPEN COURT WITH THE COURT, THE COURT REPORTER, ALL COUNSEL, THE DEFENDANT AND THE CIRCUIT CLERK PRESENT, OUTSIDE THE HEARING AND PRESENCE OF THE PROSPECTIVE JURORS, TO-WIT:)

BY THE COURT: The Court will come back to order. The State may proceed in tendering.

BY MR. EVANS: Your Honor, the State will tender Juror No. 1, Ms. Sandra Hamilton. The State will tender No. 2, Ms. Susan O'Quinn.

BY THE COURT: Actually, No. 3.

BY MR. EVANS: I mean, we have – right. Juror No. 2, but No. 3 on the list. State will tender Juror No. 8, Mr. Alexander Robinson. State will tender Juror No. 12, Ms. Janelle Marie Johnson. Juror No. 14 will be S-1. State will tender Juror No. 17, Ms. Pamela Sue Chesteen. State will tender No. 18, Ms. Lillie Mae Laney. State will tender No. 22, Mr. Larry Wayne Blaylock. State will tender No. 25, Ms. Suzanne Winstead. State will tender No. 26, Ms. Jennifer Chatham. State will tender No. 29, Mr. Harold Waller. State will tender No. 30, Mr. Jeffrey Whitfield. State will tender No. 38, Mr. Barron Davis.

BY MS. STEINER: I believe that's No. 39. Is that 38 or –

[1757] **BY MR. HOWIE:** 38.

BY MR. EVANS: I think that's 12.

BY THE COURT: Yes. That's 12.

BY MS. STEINER: Your Honor, before proceeding, I am not, at this point, making a challenge under *Batson*. No pattern has yet been established. However, State's Strike 1 was of African-American – Juror 14.

Under the Mississippi Rules, I believe any objections on the preemptory [sic] strike, the juror has to be

at least brought to the Court's attention during the panel. As we have not yet made a prima fascia case, I am not – nor do I know that one will happen. I just want to reserve the right should a prima fascia case develop hereafter for any reason to include S-1 as part of the totality of the circumstances of that case.

BY THE COURT: That's certainly appropriate, I mean.

BY MS. STEINER: Thank you.

Your Honor, S-1 – D-1 would be Juror 1. We will accept Juror 3. We will accept Juror 8. We will accept Juror 12. We will strike Juror 17 as D-2. We will accept – my print is small – Juror 18, Lillie Mae Laney. We will accept Juror 22, Larry Wayne Blaylock. We will accept Juror 25, Suzanne Winstead. We will accept Juror 28, [1758] Jennifer –

BY THE COURT: Wait, we got –

BY MR. EVANS: 26.

BY THE COURT: You probably renumbered your list – but is it No. 26, Ms. Chatham?

BY MS. STEINER: 26, Ms. Chatham. Thank you, Your Honor. We'll' strike Juror 29, Harold Waller, as Defense Strike 3. And accept Juror 30, Jeffrey Whitfield, and accept Juror 39, Barron Davis –

BY THE COURT: It's 38, but I –

BY MS. STEINER: 38.

BY THE COURT: – knew who you were talking about.

BY MS. STEINER: I made the mistake of trying to put my list on short paper.

BY THE COURT: We – it's been obvious that I had original numbers and new numbers, and I've gotten mine confused at times so that's understandable.

BY MR. EVANS: State will tender Juror No. 40, Charles Davis. State will tender 42, Marcus Lamar Fielder. 44 will be S-2. 45 will be S-3. State will tender No. 47, Bobbi Leigh Davis.

BY MS. STEINER: Your Honor, before the Defendant exercises any further preemptories, we would like to move that a prima fascia case of discrimination against [1759] African-American jurors has now been shown. The State has been tendered four – I'm sorry – three African-American jurors –

BY MR. HILL: Four.

BY MS. STEINER: Four, and has stricken three of them. And that is a 75 percent strike rate of African-American jurors. The mere fact that one has been accepted does not preclude the finding of either a prima fascia case or ultimately of discrimination on the basis of race.

BY MR. EVANS: Your Honor, I think the proper procedure is going through the entire panel and

then, if the Court rules, producing the reasons. But I'll honor whichever way the Court says do it.

BY MS. STEINER: We have no objection since ultimately, the Court's going to have to consider the totality of the circumstances in any event so if we can just reserve that.

BY THE COURT: Well, I mean, it can be reserved. The State's going to have to come forward with race-neutral reasons at some point.

BY MR. EVANS: And we will ask the Defense to do the same.

BY MS. STEINER: Your Honor, I only think that if there's a prima fascia case –

BY THE COURT: We've got to see a prima [1760] fascia case before we take that issue up.

BY MS. STEINER: I have no objection to waiting till the end to doing it and just reserving all argument with respect to that when the entire panel has been tentatively struck.

BY MR. HILL: Okay. We got three tendered.

BY MS. STEINER: All right. I believe we – D-4 would be on Juror 40. We –

BY THE COURT: Wait, wait, wait. I'm on the right page now. Give me a second to get –

BY MS. STEINER: Charles Davis.

BY THE COURT: I see it now.

BY MS. STEINER: D-4 would be Charles Davis. No. 42, Marcus Fielder, we accept. And we would exercise D-5 on Ms. Bobbi Leigh Davis. Allow me to state, Your Honor, that although we challenged her on the basis of serving for cause on – as a relative, and we are in a position where there are remaining preemptory challenges, the fact of so many jurors coming after this one who have expressed actual opinion – who have advised they have actual opinions with respect either to guilt – with respect to guilt or innocence and close connections with Defense witnesses, it would simply be irresponsible [1761] not to reserve sufficient preemptory strikes to strike those people should they come up in the Court's tender. And that we would like to reserve the issue of whether or not this family member – these two family members could stay together on that issue alone despite the fact that we are not exercising a preemptory strike here on this –

BY MR. EVANS: I thought she did exercise D-5.

BY MS. STEINER: We would not have – the fact that we did – oh, I'm sorry, Your Honor. We would not have exercised this preemptory strike, but for the Court's ruling.

BY MR. EVANS: So it's the complete opposite of what you just argued, I guess.

BY MS. STEINER: I'm sorry. But as there may be jurors down the road, where we will run out of

preemptorys and cannot strike, and I would invite the Court's attention to that when it happens. Forgive me.

BY MR. EVANS: State will tender Juror No. 50, Mr. Bobby Lester. The State will tender No. 51, Mr. Burrell Huggins.

BY MS. STEINER: D-6 will be exercised against Mr. Bobby Lester. D-7 will be exercised against Mr. Burrell Huggins.

BY MR. EVANS: No. 53 will be S-4. State [1762] will tender No. 54, Ms. Patricia Box. The State will tender No. 58, Ms. Emily Branch.

BY MS. STEINER: D-8 will be exercised on Juror 54, Patricia Box. We will accept Juror 58, Emily Branch.

BY MR. EVANS: Juror 59 will be S-5. Juror 62 will be S-6. Tender Juror No. 63, Mr. James Hargrove.

BY MS. STEINER: Your Honor, may I have a moment?

BY THE COURT: You may.

(PAUSE)

BY MS. STEINER: Thank you, Your Honor. We, the Defense, will accept Juror 63, James Hargrove.

BY THE COURT: And I believe that gives us twelve, if I'm counting right –

BY MR. HILL: Yes, sir.

BY THE COURT: – but my counting hasn't been right. At this point, I made a initial determination, based on the first three strikes, the State is going to be required to put on race-neutral reasons as to the jury strikes, because I have noted now that five out of six strikes were African-American.

BY MR. EVANS: All right, Your Honor. Are you ready?

BY THE COURT: I am.

BY MR. EVANS: On Juror No. 14, [1763] Ms. Carolyn Denise Richardson Wright. She was sued by Tardy Furniture, after these murders, by the family members that will be testifying here today. They had to garnish her wages because of that fact.

She knows almost every Defense witness in this case. She has worked with the father of the defendant, Archie, Sr. She has worked with the sister of the defendant, Cora. She knows Connie Moore. She knows Jimmy Forrest. She knows Stacy Wright. She knows his sister, Sherita. She knows his sister, Cora. She knows Archie. She knows Larry Smith. She knows Danny Joe Lott. She knows Elaine Goldstein and is married to her cousin. She knows Charles Weems, and she is his cousin.

BY THE COURT: Does the Defense offer anything to rebut the –

BY MS. STEINER: Yes, Your Honor. Allow me to say that this is subject to – and I'd like to reserve the right to take a break after we've gone through this

process to review the voir dire, because this is – a lot of data has come in, and we have tried to anticipate to the extent possible, but – but yes. We have rebuttal with respect to Ms. Wright. Like No. 17, accepted by the State, she has extensive acquaintance with [1764] many witnesses involved – on – in the family. She had an account at Tardy's, like 75. There were – there were examinations about feelings pertaining to the account. The State conducted them only on Ms. Wright and another African-American juror who had – who apparently also had been in a dispute. And if the Court – one moment, I have a note taker here.

(PAUSE)

BY MS. STEINER: And in terms of in general acquaintance with witnesses and parties in this matter, the State has accepted Juror 29, 50, and 69, who have close personal acquaintances with many prospective witnesses in this case of an even more intimate nature – oh, I'm sorry 29 and 50. And with even more intimate, personal interrelationships with individuals who are witnesses in this case and apparently made little or no inquiry of them other than to seek fairness. No probing inquiry was made by the State with respect to any of these.

And we think it is, therefore, pretextual specific and particularly in light under – of the history of race discrimination in jury selection in this district and in this particular case found by the Mississippi Supreme Court in *State v.* [1765] *Flowers* after the third trial, the first one in this district.

BY THE COURT: Have you found any white jurors who were not struck who had been sued by Tardy Furniture? And have you found any who have worked with Mr. Archie Flowers?

BY MS. STEINER: I believe, Your Honor, that – that juror – that white Juror 17 has a business acquaintanceship with Mr. Archie Flowers – and possibly with Mr. Archie Flowers, Jr. I think she's the one who is the bank teller and has expressed acquaintances – I'm sorry. Archie – no. She has – with several other people in the family, however.

BY THE COURT: Well, I'll say for the record she did indicate she knows Archie and Lola Flowers.

BY MS. STEINER: I believe so.

BY THE COURT: I mean, she did say that, because I've got that in my notes.

BY MS. STEINER: And I think these are both basically in the work place interactions, and that they are comparable. Each has informed this Court and the State of an ability to be fair and unbiased, notwithstanding that.

Your Honor, there is no evidence of an actual lawsuit, but Ms. Wright's testimony [1766] concerning it was that it was not one that created hostility or ill will. It was one of simply a financial exigency that – that came up. I think she acknowledged there was a legitimate debt there and simply that she could not pay it. And that as a result, this happened.

And I think that that is – in *Flowers III*, what the Supreme Court of Mississippi said was that when you are looking at *Batson*, you look at the totality of the circumstances and you go beyond little excuses. And that the danger, certainly, in *Flowers III* is to devolve – for the *Batson* challenging process, to devolve into an effort of uncovering and coming up with facially neutral reasons that are merely a mask for actually racially discriminatory reasons, the desire to bleach or – I suppose, if it were the other way around – darken or make male or make female, the jury and that the Court, considering the totality of the circumstances, cannot simply express this distinction.

This is based on the 14th Amendment Equal Protection Clause. And there is a huge body of equal protection civil litigation. It is referred to by the United States Supreme Court in *Snyder*, the most recent case [1767] in which a verdict was reversed on *Batson* in the United States Supreme Court.

And basically, the situation is that you may go behind the facial neutrality if anything in the record suggests that one or more of the reasons may be either unconnected and related to what is really a material issue in this case and/or appears to have been pursued with more vigor in an attempt to uncover some excuse that is of less than universal relevance.

I do not believe a general question was asked of this jury by the State, Has anybody else been sued by Tardy's or by any of the other people? It's possible the Golden family. It's possible the Rigby family. It's

possible the Ballard family have been in litigation with other people in this jury that was not inquired into, very frankly.

The Defense didn't see it as relevant if they had put up their hands and say, "I have ill will against somebody on the base of litigation." You did ask if you had feelings about acquaintances. And I think this was fishing for pretextual facially nondiscriminatory reasons, and I would reserve the right at some point – I'm not saying this is the only one, but I – you [1768] know, I've had – I haven't even had a chance to – I'm tempted to do this in advance but the –

BY THE COURT: Well, the time is now if you've got any to bring out – I mean, you know, we can't, you know, stay on one juror and then move on and come back later and argue something else on that juror. So if you've got anything –

BY MS. STEINER: No, Your – I understand Your Honor. I would request that we complete this process here and that we be given an overnight recess – I understand the court reporter –

BY THE COURT: No, ma'am. You're not – I mean, that's absolutely an absurd request. I mean, you – right now, in *Batson*, you have an opportunity to come forward and show that somehow the State's excuse is pretextural. But we don't recess for, you know, days to thumb through everything that's been said. You've got – you have taken great pride in introducing the number of interns that – don't know how many, four or five – and you've got other people here assisting you

besides your interns. And so if you've got any other arguments to make on this issue, this is the time to do it.

BY MS. STEINER: Your Honor, as I say – [1769] may I complete the inquiry. I understand the court reporter is working on and has gotten for the Court preliminary draft notes of the entire voir dire, at least and certainly as to any witness –

BY THE COURT: We're not going to wait for the voir dire to be transcribed. It would take the court reporter days to get – I don't know how many days but, I mean, they rough draft. But that's all we've got available is a rough draft. And I guarantee you if I handed a rough draft to you or to Mr. Evans and the court reporter had something wrong in that rough draft and then when it – if it got to the point where it was appealed and there was something different, you would be raising that as an issue, saying that the court reporter had changed something in a transcript. So that's why rough drafts of the transcripts from court reporters are not done.

And again, you've had – you've had an awful lot of people here assisting you. And you know, if you can't offer any other reason, then we're going to move on.

BY MS. STEINER: All right. Your Honor, they have also – one of my many interns has handed me a note. They have accepted Juror No. 12, who's related by marriage to – to at [1770] least one Defense witness, John Johnson –

BY MR. EVANS: A Defense witness?

BY MS. STEINER: We have subpoenaed him as a witness – although he will be –

BY MR. EVANS: Oh, my gosh. She's calling my investigator as her witness? That's ridiculous, Your Honor.

BY MS. STEINER: You're right, Your Honor. He will be examined adversely.

Juror No. 42, which – who was accepted by the State, has been employed by witness Thornburg and Juror No. 22. Again, friends with John Johnson. Again, other witnesses –

BY THE COURT: But I don't think there's – the sheriff at the time. Does the State have anything to respond?

BY MR. EVANS: Yes, sir, we do, Your Honor. Since I have been accused, even though this juror admitted that she was sued, I would like to offer into evidence a copy of the judgment where she was sued by Tardy Furniture.

BY MS. STEINER: Is there also a garnishment order on that?

BY THE COURT: It's an abstract of justice court where she was sued. And for the purpose of this – I mean, obviously, this isn't going to go into the jury room or [1771] anything like that.

BY MS. STEINER: I understand.

BY THE COURT: But for the purpose of this proceeding, I'll allow it.

BY MR. EVANS: I think the record speaks for itself on everything else that I offered.

(STATE'S EXHIBIT NO. 1, JUDGMENT, WAS MARKED AND RECEIVED INTO EVIDENCE FOR PURPOSES OF THIS MOTION HEARING ONLY)

BY THE COURT: Anything else?

BY MS. STEINER: Yes, Your Honor. The State has accepted No. 63, who has two prior convictions of misdemeanors reduced from felonies. He's a white juror –

BY MR. EVANS: I haven't used any criminal convictions –

BY MS. STEINER: Your Honor, may I finish my –

BY THE COURT: Well, they didn't offer that as race neutral reason as to striking Ms. Wright so I don't believe –

BY MS. STEINER: Your Honor, I'm not suggesting that they are using that as a reason for striking Ms. Wright. It's the differential level of investigation. They obviously felt it important enough to go get abstracts of judgment on this African-American juror who, as freely as Mr. Hargrove, the white juror, discussed the [1772] prior legal problems they have had. They did – they went off for what is now Defense (sic) exhibit to the *Batson* hearing 1. For him, I had not seen

any indication or discussion that they had gone off and made abstracts of the judgments on Mr. Hargrove respecting his admitted legal troubles –

BY THE COURT: Well, reckon it might be that they don't have to prove a race neutral reason for striking him since they didn't strike him?

BY MS. STEINER: No, Your Honor. I'm saying the kind of investigation was different with respect to a white juror with prior litigation history discussed in court than it was with this African-American juror with a prior litigation history discussed in court.

BY MR. EVANS: Your Honor, for the record, I would like to put in the record that we checked every prospective juror on the list to see if they had ever had any run-ins or were sued by Tardy Furniture after these murders. I think that is very relevant. If the Defense can't see the relevance of that, something is wrong with them. It is very important where they have had run-ins with these folks that are going to be the key victims in this case.

[1773] **BY THE COURT:** Well, I want to correct something. Defense counsel maybe does not recall it. But the entire panel was asked first if they had ever had a charge account with Tardy Furniture. And then they were asked if they had ever been sued by Tardy Furniture. So that was asked of the entire group. It was not just asked of African-American jurors, as you claimed.

And I also will note that you have not – I mean, Ms. Wright worked with Mr. Flowers' father, worked side – I don't know side by side – but Wal-Mart here in Winona is not like some of these giant mega stores. It's a relatively small – smallest Wal-Mart, actually, that I know in existence.

So she has worked with Mr. Flowers' father. She has been sued by Tardy Furniture. I find those to be race-neutral reasons. You are correct in pointing out that some of the other State – the other jurors that have been tendered by the State – some of these, you know, white jurors know some of these people.

But I have not found, looking through my notes, any white jurors that worked with Mr. Archie at Wal-Mart. I have not seen any indication that Tardy sued any of those. And so I think the State has offered race-neutral [1774] reasons, and I find that the Defense has failed to rebut the reasons offered by the State.

BY MR. EVANS: Your Honor, and also, she worked with his sister, Cora.

BY MS. STEINER: I believe that's a different juror.

BY MR. EVANS: No, sir.

BY MS. STEINER: I – this was Wal-Mart –

BY MR. EVANS: She also worked with Cora at the shoe store.

BY MR. HILL: She said Shoe World.

BY MR. EVANS: Shoe World.

BY MS. STEINER: I'm –

(PAUSE)

BY MS. STEINER: No, Your Honor. That was –

BY THE COURT: I don't think this one worked with Cora at Shoe World.

BY MS. STEINER: Yeah, this is not the –

BY THE COURT: I think you're thinking of someone else.

BY MS. STEINER: That was a different juror. I believe that – if she – that was Juror 62, Dianne Copper. She worked with – at Wal-Mart shoe and jewelry and formerly at H&M Beauty Supply. And I think at one of those, she worked with Ms. – one of his sisters. But this juror worked only at – at [1775] Wal-Mart where Mr. Archie Flowers was a greeter at the door and probably saw more customers more often during the day than his fellow co-workers.

BY THE COURT: Well, again, she did work at the same place. If he was a greeter, then he was bound to have seen her every time she walked in the door. And, also, she was sued by the store. If – if the only reason the State offered was that she knows some of these Defense witnesses, then there might be something there. But the fact is knowing these Defenses witnesses that you're intending to call, plus the fact that Tardy had to sue her, plus the fact that she worked

with Archie, in my mind, creates race-neutral reasons for striking her. And that is the finding of this Court.

BY MR. EVANS: All right, sir. Juror No. 44, Ms. Tashia Renee Cunningham. On her questionnaire, she put she would not consider death or life. She was back and forth in questioning on what her opinion was on the death penalty. She knows the Defendant's sister, Sherita Baskin. Under questioning, she asked how close she worked with Sherita Baskin. I asked if she worked next to her, and she said she did not. That she worked on the complete opposite end of the line. After [1776] checking with ADP, I found out that the information I'd already received was true, that she works right next to her on the line, practically every day. So not only did she lie under voir dire, but she is a close friend of hers. She knows her. And her opinions of the death penalty are so fluctuating back and forth that we could not keep her.

BY MS. STEINER: If the Court please – is that your only reason? I've –

BY MR. HILL: Give us just one minute here.

BY MR. EVANS: In *Brown v. State*, 890 So.2d 901 clearly states, and the Court has upheld, the dismissal of jurors who have given inconsistent answers in regard to their ability to return a death sentence, citing *Pinky v. State*, 538 So.2d 329. And hers was just all over the board. It depended on who asked the questions as to what her answer was.

(PAUSE)

BY MS. STEINER: Thank you. Forgive me. Your Honor, the primary – first of all, I believe the witness who testified, testified she worked in human relations department. She looked at time cards, that there were about 25 people on this same line. She said [1777] that – she did not – she was not on the floor every day. Did not see it. We specifically asked if there was documentation that would establish, in fact, being assigned consistently to immediately adjacent positions on that 25-person line. She said she could bring it. The State does not appear to have brought in that evidence that could resolve the ambiguity.

Ms. Cunningham said that yes, they worked on the same line, but they – but they usually worked quite distant from each other, She freely acknowledged her acquaintance and friendship and workplace friendship but said she could set that aside and be fair and neutral.

The State has accepted those sorts of assurances from virtually every white juror it has tendered without more than a passing conversation including, of course, Juror No. 17, who I believe was acquainted with several people in the Flowers' family in the course of the business relationship. And as Your Honor pointed out, I think while Mr. Archie was working as a greeter at Wal-Mart, that there's probably not a person in Winona who wouldn't have said, "Mr. Archie's my friend."

BY THE COURT: Does the State have any response?

[1778] **BY MS. STEINER:** Um –

BY MR. EVANS: Your Honor, there has not –

BY THE COURT: I'm sorry. Are you finished? I mean, I – you may have been pausing, and I thought that you were stopped. If I've interrupted you, I – you kind of – I thought after I asked Mr. Evans, that you were about to say something else –

BY MS. STEINER: My ancestors would take breathers during their sermons.

Your Honor, I would also suggest that juror – actually, Your Honor, I remember this. Juror 38, Barron Davis, who the State tendered – it was quite interesting because I was watching his demeanor. In particular, he had put himself as B, which means he was not absolutely strongly in favor of the death penalty but had answered his questionnaire, yes. Yes. And he was asked by Your Honor on considering both. He actually hesitated a little bit and did – and gave, I thought, an answer that made him, at least in this universe of people who we've been talking to, at least more thoughtful and less certain on the death penalty than –

BY THE COURT: Wait a minute. Are – okay.

BY MS. STEINER: – that's who – is [1779] that –

BY THE COURT: Apparently, there were some people who were wanting to come in out there –

BY MS. STEINER: I'm sorry –

BY THE COURT: If you'll wait a second, because there were some people trying to come in, and I think the door, mistakenly, was not unlocked back there after lunch or I don't know what the deal is.

BY MS. STEINER: I'm sorry. I'm thinking of the young man, 30, Mr. Whitfield. He said, "I have mixed feelings about the death penalty." And he did, when Your Honor questioned him, then said, "But yes, I can set those aside," much as this witness – what much as this juror did. Thank you – I apologize. 50 is Mr. Davis, who had the relatives on the jury.

And the – and we would say the – I think if you were – view the trans – the rough notes, that he expressed at least mixed feelings with respect to the death penalty, just as Ms. – Ms. Wright did. The – as many thought – yeah, that –

I apologize. I am thinking of the young man, and that is Juror No. 30. And I think the record will reflect that he had expressed mixed feelings. And very frankly, [1780] the Mississippi Supreme Court observed, in particular in this case, that using death penalty attitudes has been – they would find – they did not find it as the exact *Batson* grounds for reversal but found they were indicative of pretext and suspect, were the words they used. And this is a jury where there has been soul searching with respect to the death penalty

and some dislike of it on several of the jurors, but on most particular No. 30, Mr. Whitfield.

BY THE COURT: Any response from the State?

BY MR. EVANS: Yes, sir. Mr. Whitfield was clear. He said that he believed in the death penalty. He was mixed about his feelings on the death penalty. He could give the death penalty. That he could definitely give the death penalty if there was a rule in the case. He never, at any point, even hesitated on whether or not he could even consider the death penalty. And the juror that I have struck said that she could not consider giving the death penalty. It's a drastic difference. It's daylight-and-dark difference.

BY MS. STEINER: If the Court, please, under *Batson*, I believe the Supreme Court has said that the State standard falls on what it [1781] articulates in the first place and to come up with death penalty hesitation plus after we have –

BY THE COURT: Well, my record – my notes show that Ms. Cunningham was asked about the death penalty. She said she might consider it. She don't – then she said, Don't think so. Doesn't know. And then finally, after Mr. Carter was trying to rehabilitate her, she said, Possibly, she could. She put on her questionnaire that she could not consider the death penalty. That's greatly different from Mr. Whitfield, who said from the beginning on his questionnaire that he generally favored the death penalty and could consider it.

Also, Ms. Cunningham apparently from what the other – this outside witness that was brought in, said she works nine or 10 inches from Mr. Carter – I mean, Mr. Flowers' sister. You made some statement about clearing up any ambiguity. You know, there – as far as this witness that came in and testified yesterday, her testimony was fairly – it was totally unambiguous.

BY MS. STEINER: Not that it was ambiguous. That it was not verified. There were records that could verify –

BY THE COURT: Well –

[1782] **BY MS. STEINER:** – and she said she could provide those. The State has elected not to come forward with that verification.

BY THE COURT: I'm not aware of any requirement the State has to do that. They brought a witness in, and she swore under oath to these facts. And Ms. Cunningham's all-over-the-map response to the death penalty, plus her situation about working so closely with Mr. Flowers' sister, in my mind, the State has shown race-neutral reasons for that strike –

BY MS. STEINER: Your Honor –

BY THE COURT: – and the Defense has failed to rebut that race-neutral reason that was given.

BY MS. STEINER: Once again, we would urge a continuance and provision of the rough transcript so that it could be put in the court record and if –

BY THE COURT: If there's an appeal in this case, there will be a transcript on this if this case is appealed. But at this point, I don't need a transcript. I wrote notes all over this – these – there was a couple of these prior jurors when y'all were moving to strike for cause that I wanted to look back on. But I'm – the State has definitely provided race-neutral reasons as to [1783] Ms. Cunningham.

BY MS. STEINER: Your Honor, I believe – I understand this would be an aid of memory, and Your Honor has been using it. And there's no reason why it cannot be fully protected –

BY THE COURT: If I was having a memory problem, I would do that. But I'm not. I've got notes here. I have made my ruling on this, and we're going to move to the next one now.

BY MR. EVANS: May I proceed, Your Honor?

BY THE COURT: You may.

BY MR. EVANS: The next juror is Juror No. 45, Ms. Edith Burnside. She stated that she knows the Defendant. She knows Hazel Jones. The Defendant was very good friends with both of her sons. He has visited in her home many times. She also was sued by Tardy Furniture, and a garnishment was issued against her. She tried to deny that and said that she just settled with them when she came back but she was, in fact, sued by them.

She also, at one point, said she could not judge. She stood up when I asked about the ones that could not judge. She said that the fact that she knew the Defendant so well, he had visited in her home, and was such close friends with her [1784] sons might affect her decision in this case.

BY THE COURT: Response?

BY MS. STEINER: If the Court, please. Again, the differential investigation of inquiry of these – of this individual with respect to possible litigation with the Tardy family. No similar questions were pursued with possible litigation with any of the other victim families or any of the – the Defendant's families and certainly nothing to indicate that anything other than what they expected to find. And I believe Ms. Burnside's testimony was that she actually had a very fairly intimate relationship with Ms. Bertha Tardy's husband's first wife. She was the caregiver.

And that this was – she thought, before she left for Nevada, that this was a gift, basically, from the business; that when she returned, again, she discovered that this was not, in fact, such a gift and was financially unable to pay it. And there was no animosity in her towards them for having done this. She acknowledged that if they wanted – if they wanted the money, they could – they were owed it. It was not an illegitimate thing.

And the differential investigation, again, is indicative that for the State of [1785] Mississippi in this case, the process of preemptory striking has become a

search for facially non-discriminatory excuses for an effort to remove African-Americans from this jury as it did in *Flowers III*.

BY THE COURT: Well, at this point, her statement – I mean, the offer – the reason the State's made – I have notes as to all that. She first stood up when the district attorney asked her if she could judge, and she said she could not. I have seen no white person that was left on this panel that responded in a similar fashion. And I've got a note here that said she stated that she'd preferred not to judge. Again, I don't have any notes that would indicate that there was any white person that said that.

She was sued by Tardy Furniture. I do not recall her indicating that she thought it was a gift. She did say she moved to Nevada and then came back and was sued, but – and there's no evidence that any murders occurred on any business property that was owned by any other individual than Tardy Furniture or that anybody else owns a business. So I don't think that the fact that the State didn't ask about other businesses that were not related to this case have any merit.

[1786] But I think the State has offered numerous race-neutral reasons for this strike, and there are not white jurors that were left on the panel that have the race-neutral reasons the State has offered for striking Ms. Burnside.

BY MS. STEINER: Your Honor, we would incorporate all of the other – including No. 17, who was widely –

BY THE COURT: I offered you the opportunity, and I've made my ruling and so we'll move to the next one now. I don't like to be continually challenged after I've made a ruling. And so we will move now to – I believe it was S-4?

BY MR. EVANS: Yes, sir. S-4 is No. 53, Ms. Flancie Young Jones. She is related to the Defendant. She admitted that she was related – she was cousin – or the Defendant's sister, Angela Jones, is her niece. So she said she guessed she must be related to him. Well, I guess so. He would be her nephew.

She was late two different times, appearing in court approximately 30 minutes late both times. She – hold on a minute. Let me read my writing. She was back and forth all over the place on her opinion about the death penalty. She admitted – and I [1787] thought it was very strange when I asked her if she had lied on her questionnaire about her opinion of the death penalty, she said that she had. She – on her questionnaire, it states that she is strongly against the death penalty. And she comes in now trying to say that she is for the death penalty. And her – like I say, her only explanation for that change was that she said she had lied on her questionnaire.

BY THE COURT: But I think between being related to the Defendant, her views on the death penalty, she is also related to Hazel Jones – which, of course, she's going to be related to all of the Defendant's family. I think those reasons are definitely clear

race-neutral reasons for why we could not leave her on the jury.

BY MS. STEINER: Your Honor, I think it seems – her – her relationship is to Ms. Hazel Jones by marriage. And it is Ms. Hazel Jones' son who is married to a lady named Angela or Andrea.

Now, I find that is not the same person as the Angela Jones married to a Mr. Jones in Prairie View, Texas. So yes – so he is not the nephew. There is a in-law relationship to the entire family through – she's married to – her husband and Hazel [1788] Jones are brother-in-law and sister-in-law, as I understand it. And – but she says that she is not connected with that wing of her husband's family, that she has no actual knowledge, that she had to come to court to learn of such connections. They accepted juror –

(PAUSE)

BY MS. STEINER: Your Honor, maybe we didn't get to this juror. They seemed to have no problem certainly during voir dire with the marital – marriage relationships when they were defending juror – I'm sorry. There were several jurors who had relationships by marriage. In fact, we made challenges on – on Juror 111, whose relationship by marriage for 25 years to Ms. Margie in the D.A.'s office, and the Court found that in-law relationships are of minimal significance and denied our cause challenge –

BY THE COURT: Well, now, if the State was moving to strike this person for cause, my ruling

would be the same. But this is not a situation where the State is moving to strike this person for cause.

BY MS. STEINER: Again, we would cite the totality of the circumstances and the apparent cherry picking of the

* * *

[1790] **[BY THE COURT]** And then Hazel Jones is her husband's brother's wife and, you know, that's another family connection there.

But, you know, her lying on the questionnaire and then admitting that and then changing what she was saying in court is grounds alone for – or race-neutral grounds. But that, plus these relationships where Mr. Flowers is married – Mr. Flowers' sister is married to her nephew and Hazel is married to her brother-in-law are race-neutral grounds. So I'm – I make a finding that the Defense has failed to overcome and failed to rebut the proof that's been offered by the State of Mississippi.

BY MS. STEINER: Your Honor, for fear of waiving something, my shortcomings as a defense attorney to Mr. Flowers would be evident if I did not at this point, point out, Your Honor, that they have accepted Juror 51, who lied on his questionnaire about – and to this Court – until finally called in for further voir dire with respect to his actually having been through the voir dire process in this Court before. And believe that that is a distinction without a difference. They accepted Mr. Huggins, 51.

They apparently don't care if white people lie. They do care if – or clarify [1791] themselves or say things on their questionnaires that it turns out were not completely consistent. They do care if black people do. It is part of the totality of the circumstances that make this an additia pretext in this court, and I do have to preserve that record. I spent several hours talking to the – several minutes talking to the Mississippi Supreme Court about just that question.

BY MR. EVANS: I must have missed that question because I never saw a question that he was asked on the questionnaire about whether he had been on another panel or not.

I think referring to him as a liar is completely wrong. There was no indication that he lied on anything. That was not brought up. When it was brought up, he said, Yep, I was on another panel. There were a lot of people that were on this panel that were on another panels. Some never were asked about it. He did not comment to any of that. And strictly, he definitely, as the Court stated and I stated earlier, didn't sit in that chair right up there and admit to the Court and everybody else that he had purposely lied on his questionnaire.

BY MS. STEINER: Your Honor, he said to the Court the first thing he had heard about [1792] this case was when he walked in and sat down and began to be qualified this past Friday. Those were the first words out of his mouth. When he came back in and had

this discussed with him and then, Oh, oops. Yeah, you're right. I did this two years ago.

Your Honor, this is a degree of questionable seriousness or voracity [sic] of wanting – wanting to be on or off that is equally of the same nature as what they are objecting to here in –

BY THE COURT: Well, I have made my ruling, but I'll reiterate that she said up here from this stand, "I lied on that questionnaire." I never did hear Mr. Huggins say he lied, and you didn't ask him. You know, you didn't ask him when he was called back in, Did you lie when you said that? So I can't know his frame of mind of why he didn't originally point out he was in the original voir dire. But he clearly did not say that he lied.

And again, the statement on the questionnaire said she could not under any circumstances consider the death penalty. And now she, in court, is saying that she can. That is vastly different. And also, again, these relationships she's got.

I do not have any white juror that [1793] has been allowed to remain on that had those issues. And so I will again restate that I find that there has been a failure to overcome the race-neutral reasons that was offered by the State of Mississippi. And I that's all as far as the race – I think that would –

BY MR. EVANS: No, sir. No, sir. It's two more strikes that we'd made, S-5 and S-6.

BY THE COURT: Okay. I'm sorry. Yeah, that's right.

BY MR. EVANS: Juror No. S-5, Ms. Julia Ann Nail is a white female, but I would – since we're going through this, I might as well just state my reasons for striking her, too. She said that she could consider both, but she said that she preferred life without parole. So because of that reason, we have struck her, which is similar to some of the others that we have been striking. Juror No. – well, I don't guess the Court needs to rule on that one, does it?

BY THE COURT: They're only attacking the strikes as to African-Americans, so –

BY MR. EVANS: Okay.

BY THE COURT: – but she did say she was strongly in favor of life without parole.

BY MR. EVANS: Juror No. S-6, Ms. Dianne Owens Cooper or Copper – I'm not sure how [1794] she pronounces it. And I was wrong on the other one. This is the one that worked with two of the Defendant's family members. She has worked with his father, and she has worked with his sister, Cora, at the shoe place. She stated that she knows Curtis' family. She's stated that she leaned toward favoring his side of the case. She knows many Defense witnesses.

And the reason I point that out, it's not just that she knows those witnesses, but that because of knowing the family and – working with those two family members, she stated that that relationship would

influence her. She later said that – well, she could not have an open mind. And then she was equivocal back and forth. But because of all of those relationships, she clearly stated, when I asked her, that they would influence her. She could not have an open mind, and she was leaning toward the Defendant's family.

BY THE COURT: I think that's –

BY MS. STEINER: Thank you. Your Honor, again, they have accepted – virtually every white juror they have accepted has had some connection, personal or professional as Ms. Copper has a professional workplace relationship with someone who is a likely [1795] witness in this case, including Juror No. 17.

This is the juror, Your Honor, who apparently was being fished with living in the neighborhood. And they asked, In the neighborhood? She said it was a couple of blocks away. And Harper Street and Cade Street intersect, she said, a couple of blocks from her home. She specifically said that she did not know the Flowers family well enough to be able even to say how many houses from the corner it was. She knew it was down where Cade Street began. This is a witness who the State – and not just with respect to the people already struck – but the State has repeatedly stood up and said it really doesn't matter if they're acquainted, if they're not close. Visitors in the household take the people's word for it. This is not an important relationship. These are business relationships.

And again, under the totality of the circumstances and most particularly the differential questioning of

this witness insisting that – that's the case. Moreover, they have accepted Jurors 40 and 50, each of whom testified in this court as they were being voir dired that they have formed an opinion. There was great – the State properly, as it should, went after them and [1796] said, But you can lay that aside. And I don't believe they attempted to ask her if she could lay hers aside. I believe the Court elicited that from her. I believe we elicited that from her. But when this black juror expressed an opinion that she had formed or had a leaning, they didn't bother to try and rehabilitate her as they did with Jurors 40 and 50, who they have tendered here this afternoon.

BY THE COURT: Well, the Court – neither No. 40 or No. 50 stated that they were learning toward the Flowers' family in this case. And she did. There – there wasn't anything for them to rehabilitate because they didn't say they were leaning towards the Flowers family. And –

BY MS. STEINER: They didn't say –

BY THE COURT: I'm making my ruling now, ma'am. I'm tired of you interrupting me constantly.

Also, she had stated that she worked with Archie at Wal-Mart, and she worked with Cora at Shoe World. She's had close working relationship with those two individuals in Mr. Flowers' family. I see that greatly different than No. 17, Ms. Chesteen, who was the bank teller and has people that's come into the bank. There's no indication that [1797] Ms. Chesteen has ever

worked with Archie Flowers, ever worked with Cora or anybody else. And so there is a huge difference between the – S-6 with Ms. Copper and any white juror that was left on the panel.

BY MS. STEINER: Again, Your –

BY THE COURT: And now, if the State will proceed to –

BY MS. STEINER: Your Honor, may I be heard?

BY MR. EVANS: The State will tender No. 67.

BY MS. STEINER: May I be heard before –

BY THE COURT: Ma'am, I'm tired of you inter – I mean, I've made a ruling. And I don't know – you know, when you have something to say, you need to say it before I have made the ruling. But after I make a ruling, you're constantly arguing with the Court and constantly coming forward with other things. And I'm kind of getting tired of that.

BY MS. STEINER: Your Honor raised in your ruling the fact that the opinions expressed – the opinions of 40 and 50 were not opinions in favor of the Flowers family. Your Honor, neither of these jurors advised as to what that opinion was. It is equally likely if you have an opinion it could be for [1798] either side. These jurors did not express an opinion and –

BY THE COURT: You're absolutely correct. They did not, and she did. That makes it different. That

is the difference. She said, "I would tend to lean toward favoring that family." And that – that is different than somebody that expresses no statement to that. And again, none of these others worked side by side or in the same Shoe World with Mr. Flowers' sister. Nobody – that is, nobody that's on the panel that worked with Mr. Archie.

And now again, if the State will tender –

BY MR. EVANS: Tender 67.

BY THE COURT: Let me get back to my – I'm trying to – I don't know if you need to just go ahead and tender three alternates or –

BY MR. EVANS: I thought we were just going to do one at a time with one strike per alternate?

BY THE COURT: Well, yeah. That is how the rules say.

BY MS. STEINER: We would – we would strike No. 67.

BY THE COURT: So D –

BY MR. EVANS: All right. We'll take 68 [1799] as the first alternate. And we will tender 69 as the second alternate.

BY MS. STEINER: We will – DS-2 will be Juror No. 69, and we are now out of challenges with respect to –

BY THE COURT: No. I said I was going to have three alternates, but –

BY MS. STEINER: Oh.

BY MR. EVANS: Okay, your Honor –

BY MS. STEINER: Do we have a third strike for –

BY THE COURT: Excuse me?

BY MR. EVANS: We will accept No. 72 as the second alternate.

BY THE COURT: Well, let me – on Julia Ray, I assume there was not any – I assume that you did not – that you did not –

BY MS. STEINER: No, we did not exercise a preemptory.

BY THE COURT: Then she will be Alternate 1. And I mean, the order in which these alternates are put on would be the order in which if somebody got sick or had somebody die, like we had a juror earlier in the week, family member or something – so anyway, we got –

BY MR. EVANS: We will accept No. 72 as the second alternate.

BY MS. STEINER: Your Honor, we would [1800] strike – DS-3.

BY MR. EVANS: They've already used one strike –

BY THE COURT: Well, they've used DA-1 – let me finish – Defense Alternate 1. When I say DA-1, it sounds like I'm – that I'm – this is Defense Alternate Strike 1 on Amason. Defense Alternate Strike 2 on Carpenter. And I'm taking Defense Alternate Strike 3 on Colbert; is that correct?

BY MS. STEINER: That is correct.

BY MR. EVANS: All right. We will accept 75 as the second alternate then.

BY MS. STEINER: Your Honor, for the record, this is a juror who we had challenged under *Murphy* and *Reynolds* for impartiality. We are out of strikes here. We are not – it is not possible for us to exercise a preemptory strike against this prospective juror because we have had to expend all three of our preemptories.

We would like to reserve our right to – should there be an appeal – to challenge the – to raise the challenge for cause that would – given to this juror earlier which was overruled by the Court as we are without further preemptories with which to challenge this juror.

BY MR. EVANS: Your Honor, for the record, [1801] the only reason we're to that juror is the Defense allowed them to change the rules. It's my understanding that there was going to be three alternates, one strike per side per alternate. They had already used a strike for the second alternate. They asked to use another strike for that alternate, and the Court let

them. So it's because they asked for an extra strike to use on that alternate that we even get to Linda Martin.

BY MS. STEINER: All three of these jurors were cause challenges by the Defendant.

BY THE COURT: And I'll have you now tender one more alternate.

BY MR. EVANS: Tender 78 as the third alternate.

BY MS. STEINER: We have no more preemptories, but we will accept her.

BY THE COURT: I'm going to call the jury in and have them seated, and –

BY MS. STEINER: Your Honor, could we recite who the jurors are?

BY THE COURT: I'm showing No. 3, O'Quinn; 8, Robinson; 12, Johnson; 18, Laney; 22, Blaylock; 25, Winstead; 26, Chatham; 30, Whitfield; 38, Davis; 42, Fielder; 58, Branch; 63, Hargrove; 68, Alternate 1, Ray; Alternate 2, 75, Martin; Alternate 3, Williams, 78.

* * *